

EXHIBIT 2

STATE OF MICHIGAN
30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM
CIVIL DIVISION

THE GENERAL RETIREMENT SYSTEM
OF THE CITY OF DETROIT, and THE
POLICE AND FIRE RETIREMENT SYSTEM
OF THE CITY OF DETROIT,

Plaintiffs,

6 v Case No. 13-768-CZ
7 KEVYN D. ORR, in his official capacity Hon. Rosemarie Aquilina
8 as the EMERGENCY MANAGER OF THE CITY OF
9 DETROIT, and RICHARD SNYDER, in his
official capacity as the GOVERNOR OF THE
STATE OF MICHIGAN

Defendants

11 GRACIE WEBSTER and
VERONICA THOMAS.

Plaintiffs,

13 v Case No. 13-734-CZ
14 THE STATE OF MICHIGAN; RICHARD Hon. Rosemarie Aquilina
SNYDER, as Governor of the State
15 of Michigan; and ANDY DILLON,
as Treasurer of the State of
16 Michigan

Defendants

17 _____,
18 ROBBIE FLOWERS, MICHAEL WELLS,
JANET WHITSON, MARY WASHINGTON,
and BRUCE GOLDMAN.

Plaintiffs,

20 v Case No. 13-734-CZ
21 Hon. Rosemarie Aquilina
22 RICK SNYDER, as the Governor of the
State of Michigan; ANDY DILLON, as
the Treasurer of the State of Michigan;
and the STATE OF MICHIGAN.

Defendants

25 *MOTION FOR PRELIMINARY INJUNCTION*

1 BEFORE THE HON. ROSEMARIE AQUILINA, CIRCUIT JUDGE

3

4 APPEARANCES:

5 For Plaintiffs Retirement Systems:

RONALD A. KING (P45088)
MICHAEL J. PATTWELL (P72419)
CLARK HILL PLC
212 East Grand River Ave.
Lansing, MI 48906

8 For Plaintiffs Webster, et al.:

JOHN R. CANZANO (P30417)
Smith & Radtke, PC
400 Galleria Officentre, Ste. 117
Southfield, MI 48034

11 For Plaintiffs Flowers, et al.:

WILLIAM A. WERTHEIMER (P26275)
Attorney at Law
30515 Timberbrook Lane
Bingham Farms, MI 48025

14 For the Defendants:

THOMAS QUASARANO (P27982)
Assistant Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909

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18

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REPORTED BY:

Melinda I. Dexter, RMR, RPR, CSR-4629
Official Court Reporter
313 W. Kalamazoo
Post Office Box 40771
Lansing, MI 48901-7971

1 *T A B L E* *O F* *C O N T E N T S*

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5 WITNESSES:

6 None

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11 EXHIBITS:

12 None

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<p>1 Ingham County, Michigan 2 Thursday, July 18, 2013 - At 4:15 p.m. 3 MR. KING: Good afternoon. 4 THE COURT: Good afternoon. We have everybody 5 here? 6 MR. KING: They are. 7 THE COURT: All right. This is Docket 8 13-768-CZ, the General Retirement System of the City of 9 Detroit and the Police and Fire Retirement System of the 10 City of Detroit versus Kevin D. Orr, in his official 11 capacity as the Emergency Manager of the City of Detroit, 12 and Richard Snyder, in his official capacity as the 13 Governor of the State of Michigan. 14 Counsel, your appearances for the record. 15 MR. KING: Good afternoon, your Honor. Ron 16 King with Clark Hill on behalf of the Plaintiffs, the 17 General Retirement System of the City of Detroit and the 18 Police and Fire Retirement System of the City of Detroit. 19 THE COURT: Welcome. 20 MR. KING: Thank you. 21 MR. QUASARANO: Your Honor, if I may, Thomas 22 Quasarano, Assistant Attorney General, that will be 23 appearing in this case on behalf of the Defendant. I 24 believe the Defendant was served yesterday. We have not 25 received a request for representation, but I'm very</p>	<p>1 Counsel? 2 MR. KING: Your Honor, Ron King again on behalf 3 of the Plaintiffs, the Detroit Retirement Systems. We 4 might need to beg the Court's indulgence. While we 5 appreciate that you have seen us on very short notice, 6 we've been advised that the City has filed, and we're 7 pulling it up on the electronic filing system, so we 8 might need a few minutes here to figure out our very next 9 step. 10 THE COURT: Okay. 11 MR. KING: Because the effect of a bankruptcy 12 filing, if, in fact, that's -- we're trying to conform 13 that. We think, in fact, it has been filed here within 14 the last half hour. So we probably need about a 15 ten-minute recess here, if the Court would indulge us. I 16 know you have another matter. 17 THE COURT: Do we want to make a phone call? 18 MR. KING: Yeah. We can, but we're pretty -- 19 THE COURT: Well, here's the thing: If they 20 haven't filed, we need to hurry up and proceed. If they 21 have filed -- 22 MR. KING: We're pretty confident that they 23 filed. 24 Right? 25 I mean, we're pulling it up. Yeah. It's been</p>
<p>4</p> <p>1 likely going to be asked to represent the Governor. 2 THE COURT: Sir? 3 MR. WERTHEIMER: Excuse me, your Honor, 4 William Wertheimer. I apologize for my dress. 5 THE COURT: No problem. I know it's last 6 minute. I don't care how people are dressed. It's more 7 important that you are here. 8 MR. WERTHEIMER: Thank you, your Honor. I was 9 here to file my reply brief today for the Monday hearing. 10 I am now here knowing that this motion has been filed, 11 and I wanted to enter my appearance. 12 THE COURT: All right. You may have a seat. 13 There is plenty of room for all. 14 MR. WERTHEIMER: Thank you. 15 MR. CANZANO: Your Honor, excuse me, John 16 Canzano, Plaintiffs' attorney in the Webster case. Same 17 as Mr. Wertheimer, we just found out about this. I'm 18 here. My reply brief is being filed. I have a judge's 19 copy here somewhere. 20 THE COURT: All right. Have a seat. 21 MR. KING: Your Honor -- 22 THE COURT: Anybody else? 23 MR. PATTWELL: Your Honor, Michael Pattwell 24 from Clark Hill on behalf of Plaintiffs. 25 THE COURT: Thank you.</p>	<p>6</p> <p>1 confirmed. So I'm not sure where that leaves us with 2 this proceeding because it's going to be pretty hard to 3 undue. It's been done. 4 MR. WERTHEIMER: There is no automatic stay in 5 this. 6 MR. KING: Yeah. What we're here for -- the 7 really -- 8 What counsel is saying is there is no automatic 9 stay with respect to this proceeding. So in our 10 judgment, this matter will proceed. What you have before 11 you, however, is a motion for temporary restraining order 12 to enjoin certain conduct that's already occurred. So 13 I'm not sure that we really have a lot of business in 14 front of the Court at this moment, but I would like to 15 just confer for about ten minutes on that issue because 16 we will proceed in the case. And if we're here and you 17 want to take the time to set some sort of expedited 18 briefing schedule, we could do that also. 19 It's quite likely that you, your Honor, will be 20 able to make a ruling on the merits of this case in 21 advance of whatever occurs in the context of a Chapter 9 22 filing. 23 THE COURT: I plan on making a ruling on 24 Monday. I could make a ruling tomorrow, if push came to 25 shove, but Monday would probably be soon enough. I am</p>

<p>1 confident that the bankruptcy court won't act as quickly 2 as I will.</p> <p>3 MR. KING: Yeah. I'm not sure, but we'll see. 4 I mean, there might -- but, nevertheless, so we should --</p> <p>5 If you're prepared to rule on the merits on 6 Monday, again I'm not sure what -- if there is much 7 business for us left to do before the Court today.</p> <p>8 THE COURT: Unless some kind of -- I don't 9 really have any authority over them, so.</p> <p>10 MR. KING: Right.</p> <p>11 THE COURT: I don't think anything --</p> <p>12 Counsel?</p> <p>13 MR. WERTHEIMER: Your Honor, the motion that's 14 up for Monday, our motion at least that's up for Monday, 15 is a request for a preliminary injunction to enjoin the 16 Governor. We have no evidence the Governor has 17 authorized any bankruptcy, and we would not only want to 18 go forward on Monday but ask that the motion for 19 preliminary injunction be moved up to now, hopefully, to 20 tomorrow morning if the Court will not hear it now. But 21 I don't think there is any reason why the Court cannot 22 hear our motion for preliminary injunction.</p> <p>23 I'm not talking about in terms of the Court's 24 preparedness but in terms of the apparent filing. They 25 may have filed. But nobody -- I asked the Governor's</p>	<p>1 we should find out from the Office of the Attorney 2 General whether the Governor has authorized a bankruptcy 3 that has done the act that we were attempting to enjoin 4 and that they knew we were attempting to enjoin and that 5 they've known for the last two weeks and that they're 6 filing briefs on saying that it's not ripe. The 7 attorneys for the Government have represented to this 8 Court that our motion is not ripe.</p> <p>9 THE COURT: I just received a note from my law 10 clerk that says the bankruptcy was filed at 4:06.</p> <p>11 MR. KING: Right. Your Honor, so what we'd 12 like to do here is amend our emergency motion for 13 temporary restraining order and get it and request from 14 this Court an order enjoining the Governor and the 15 Emergency Manager from taking any further action in the 16 bankruptcy proceeding, and we'll modify our order to that 17 effect.</p> <p>18 MR. WERTHEIMER: I would join that as to the 19 Governor. We have not sued the Detroit Emergency 20 Manager, but I would orally join in that motion as to the 21 Governor and the Secretary of the Treasury.</p> <p>22 MR. CANZANO: I would say the same in our case. 23 We're not joining their motion but we're making a motion 24 in our case that would be the same as theirs only against 25 the Governor.</p>
<p>8</p> <p>1 Office before we came in here -- er, the Attorney General 2 whether they could make any representations to me that 3 would obviate the need for me going forward, and they 4 could not.</p> <p>5 So we've got a written, fully briefed request/ 6 motion for preliminary injunction. The Attorney 7 General's Office has briefed it. Time is obviously of 8 the essence. I would suggest that the Court hear our 9 motion to preliminarily enjoin the Governor authorizing a 10 bankruptcy now.</p> <p>11 MR. CANZANO: Your Honor, I would make 12 essentially the same request except that our motion, 13 although it seeks preliminary injunctive relief in the 14 alternative, it primarily seeks a final declaratory 15 judgment that what has just happened, apparently, is 16 unconstitutional, and that is ready for a final decision 17 we were saying on Monday. We have a reply brief that has 18 just been filed, and we would -- we could -- this Court 19 could issue that order immediately, and I don't know what 20 the consequences for the bankruptcy court would be, 21 necessarily, but I think it would -- it might make a 22 difference.</p> <p>23 MR. WERTHEIMER: I'm sorry, and I think that at 24 a minimum, your Honor, I think we should -- I think the 25 Court should decide the preliminary injunction now, but</p>	<p>10</p> <p>1 THE COURT: Granted, as to all of your 2 requests.</p> <p>3 How soon are you going to present me with an 4 order?</p> <p>5 MR. KING: Right now.</p> <p>6 THE COURT: All right.</p> <p>7 MR. KING: We just need to mark up the order 8 that we have for the Court.</p> <p>9 THE COURT: Absolutely.</p> <p>10 MR. QUASARANO: Your Honor, if I may, we would 11 ask that the Court stays enforcement of the order, and 12 your ruling on that would be appreciated at this time.</p> <p>13 THE COURT: Denied.</p> <p>14 MR. QUASARANO: Thank you. We'll present an 15 order as soon as possible.</p> <p>16 THE COURT: Thank you.</p> <p>17 MR. QUASARANO: Thank you, Judge.</p> <p>18 MR. WERTHEIMER: Your Honor, we will need a few 19 minutes to prepare a written order, but if we can --</p> <p>20 THE COURT: Well, sir, would you like to copy 21 that and modify what they're doing? My law clerk will be 22 happy to help you.</p> <p>23 MR. WERTHEIMER: Thank you, your Honor.</p> <p>24 THE COURT: As to your stay, you'll be getting 25 that to me in --</p>

1 THE COURT: No problem.

2 Now, if you're back tomorrow, what is it going
3 to be for?

4 MR. KING: We might file a mandamus action
5 requiring the EM to withdraw the Chapter 9 filing.

6 THE COURT: Will this require time on the
7 record?

8 MR. KING: Yes.

9 THE COURT: Okay. My time restriction is that
10 I have my morning free until about 1:30. Can you get it
11 here before 1:30?

12 MR. PATTWELL: Yes.

13 MR. KING: Absolutely.

14 THE COURT: I'll make myself available all
15 morning until 1:30.

16 MR. KING: Thank you, your Honor.

17 THE COURT: Okay.

18 MR. CANZANO: May I approach, your Honor? I
19 have an order drafted also.

20 THE COURT: You may.

21 MR. CANZANO: (Approaching the bench.)

22 THE COURT: Okay. We'll make you copies, and
23 this is our copy.

24 Anything else for the record?

25 MR. KING: No, your Honor. Thank you.

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1 MR. WERTHEIMER: No, your Honor. Thank you.

2 THE COURT: That's all for the record. Thank
3 you.

4 (At 4:38 p.m., the matter is
5 concluded.)

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1 STATE OF MICHIGAN)
2) SS.
2 COUNTY OF INGHAM)

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4 CERTIFICATE OF REPORTER

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6 I, Melinda I. Dexter, Certified Shorthand
7 Reporter, do hereby certify that the foregoing
8 **17 pages** comprise an accurate, true, and complete
9 transcript of the proceedings and testimony taken in the
10 case of **The General Retirement System of the City of**
11 **Detroit, et al., versus Kevyn D. Orr, et al., Case**
12 **No. 13-768-CZ, and Gracie Webster, et al., versus the**
13 **State of Michigan, et al., Case No. 13-734-CZ, and**
14 **Robbie Flowers, et al., versus Rick Snyder, et al., Case**
15 **No. 13-729-CZ, on Thursday, July 18, 2013.**

16 I further certify that this transcript of the
17 record of the proceedings and testimony truly and
18 correctly reflects the exhibits, if any, offered by the
19 respective parties. WITNESS my hand this eighteenth
20 day of July, 2013.

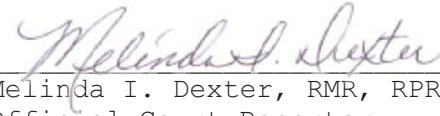
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Melinda I. Dexter, RMR, RPR, CSR-4629
Official Court Reporter
313 West Kalamazoo
Post Office Box 40771
Lansing, Michigan 48901-7971

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT

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In re:

CITY OF DETROIT, MICHIGAN,

Chapter 9

Debtor.

Case No. 13-53846

Rhodes

Hon. Steven W.

----- X
PROOF OF SERVICE

The undersigned certifies that on July 24, 2013, a copy of Objection Of Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington, Bruce Goldman and International Union, UAW To Motion of Debtor, Pursuant to Section 105(a) Of The Bankruptcy Code, For Entry Of An Order Extending The Chapter 9 Stay To Certain (A) State Entries, (B) Non-Officer Employees and (C) Agents and Representatives Of The Debtor (Docket No. 56), and the accompanying Amended Declaration of William Wertheimer, were served upon parties via the Court's electronic court filing service.

I declare that the foregoing statement is true to the best of my information, knowledge and belief.

/s/ Niraj R. Ganatra
Niraj R. Ganatra (P63150)
International Union, UAW
8000 E. Jefferson Avenue
Detroit, Michigan 48214
(313) 926-5216
nganatra@uaw.net

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
: Detroit, Michigan
: July 24, 2013
Debtor. : 10:02 a.m.
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HEARING RE. MOTION OF DEBTOR, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER CONFIRMING THE PROTECTIONS OF SECTIONS 362, 365 AND 922 OF THE BANKRUPTCY CODE (DOCKET #53) AND MOTION OF DEBTOR, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER EXTENDING THE CHAPTER 9 STAY TO CERTAIN (A) STATE ENTITIES, (B) NON-OFFICER EMPLOYEES AND (C) AGENTS AND REPRESENTATIVES OF THE DEBTOR (DOCKET #56) BEFORE THE HONORABLE STEVEN W. RHODES UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: HEATHER LENNOX
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
(216) 586-3939

For AFSCME: Lowenstein Sandler, LLP
By: SHARON L. LEVINE
65 Livingston Avenue
Roseland, NJ 07068
(973) 597-2374

For Syncora
Guarantee and
Syncora Capital
Assurance: Kirkland & Ellis, LLP
By: RYAN BENNETT
300 North LaSalle
Chicago, IL 60654
(312) 862-2074

For Public Safety
Unions: Erman, Teicher, Miller, Zucker &
Freedman, PC
By: BARBARA PATEK
400 Galleria Officentre, Suite 444
Southfield, MI 48034
(248) 827-4100

APPEARANCES (continued):

For Police and Clark Hill, PLC
Fire Retirement By: ROBERT GORDON
System and 151 South Old Woodward, Suite 200
General Retirement Birmingham, MI 48009
System of the City (248) 988-5882
of Detroit:

For the UAW: Cohen, Weiss & Simon, LLP
By: BABETTE CECCOTTI
330 West 42nd Street, 25th Floor
New York, NY 10036
(212) 356-0227

For the Flowers Law Offices of William A. Wertheimer
Plaintiffs: By: WILLIAM WERTHEIMER
30515 Timberbrook Lane
Bingham Farms, MI 48025
(248) 644-9200

For Nathaniel In pro per
Brent: NATHANIEL BRENT
538 South Livernois
Detroit, MI 48209

For the Phillips The Sanders Law Firm, PC
Plaintiffs: By: HERBERT A. SANDERS
615 Griswold, Suite 913
Detroit, MI 48226
(313) 962-0099

For the State of Michigan Department of Attorney General
Michigan: By: MATTHEW SCHNEIDER
525 West Ottawa Street, Fl. 7
P.O. Box 30212
Lansing, MI 48909
(517) 241-8403

For the Webster McKnight, McClow, Canzano, Smith &
Plaintiffs: Radtke, PC
By: JOHN R. CANZANO
400 Galleria Officentre, Suite 117
Southfield, MI 48034
(248) 354-9650

Court Recorder: Letrice Calloway
United States Bankruptcy Court
211 West Fort Street
21st Floor
Detroit, MI 48226-3211
(313) 234-0068

Transcribed By: Lois Garrett
1290 West Barnes Road
Leslie, MI 49251
(517) 676-5092

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 THE CLERK: Case Number 13-53846, City of Detroit,
2 Michigan.

3 THE COURT: Good morning. Stand by one moment for
4 me, please, sir. I'd like to begin by reviewing with
5 everyone the order of proceedings here, and then we'll get
6 right to the arguments. The first thing I'd like to do is
7 administer the oath to attorneys who seek to become members
8 of the Bar of this Court, and then I will give a brief
9 opening statement, and then we will proceed with the
10 arguments. It is my intent to allow the city, who is the
11 movant here, 15 minutes for its initial argument and then to
12 allow each of those creditors who have filed objections to
13 the motion 15 minutes each as well and then a 15-minute
14 rebuttal for the city. Oh, actually, before that rebuttal I
15 want to give any attorneys who would like to be heard on the
16 record but who did not file objections to be heard as well
17 and then a rebuttal by the city. And then we'll take a break
18 so that I can deliberate on the motions and then after a
19 period of time come back out and give you my decision.

20 So let's begin with the administration of the oath
21 to those attorneys who need admission. Would those of you
22 who do seek admission to the Bar of the Court step forward,
23 please? You can actually just stand right there in front of
24 the bench and tell me who you are.

25 MR. LEMKE: I'm David Lemke, your Honor, from

1 Nashville, Tennessee.

2 MR. SMITH: Bill Smith, your Honor, from Chicago.

3 MR. BENNETT: Ryan Bennett, your Honor, from
4 Chicago.

5 THE COURT: Okay. One second, please. Here we go.
6 And raise your right hands. Do you affirm that you will
7 conduct yourselves as attorneys and counselors of this Court
8 with integrity and respect for the law, that you have read
9 and will abide by the civility principles approved by the
10 Court, and that you will support and defend the Constitution
11 and laws of the United States?

12 ATTORNEYS: I do (collectively).

13 THE COURT: All right. Welcome to the Bar of our
14 Court. Counsel, we will take care of filing your papers for
15 you.

16 ATTORNEYS: Thank you, your Honor (collectively).

17 THE COURT: One more moment, please. Okay. I'd
18 like to begin by describing for those who may be watching or
19 listening in what the matters are before the Court today.
20 There are two motions before the Court today. The parties
21 refer to one of the motions as the stay confirmation motion,
22 and they refer to the second motion as the stay extension
23 motion.

24 When anyone files bankruptcy, all of the legal
25 proceedings against that person are stopped. We call that a

1 stay, a stay of proceedings. When a municipality like the
2 City of Detroit files bankruptcy, all of the legal
3 proceedings against the city and its officers to collect on a
4 claim against the city are also stopped. The stay
5 confirmation motion simply requests an order confirming these
6 stays under the United States Bankruptcy Code are in effect.
7 The stay extension motion requests that the Court extend or
8 expand those statutory stays by entering an injunction to
9 stop proceedings against other employees of the city and
10 against the governor and the treasurer of the state. Those
11 are the only two motions before the Court here today. Not
12 before the Court is whether the city is eligible to file
13 bankruptcy or whether any plan that the debtor might propose
14 in the case is confirmable under the Bankruptcy Code. Those
15 issues will be, I expect, fully litigated in due course in
16 this case.

17 So now we are ready for arguments on these two
18 motions first by the city, and, counsel, I need to remind you
19 because of our equipment in this room, when you address the
20 Court, you do need to stand at the lectern and speak into the
21 microphone there.

22 MS. LENNOX: Good morning, your Honor. Heather
23 Lennox of Jones Day on behalf of the city.

24 THE COURT: You may proceed.

25 MS. LENNOX: Thank you, your Honor. With respect to

1 the stay confirmation motion, your Honor, I think your Honor
2 summarized exactly what we're looking for quite cogently and
3 concisely. The reason we filed the motion, your Honor, as
4 has been evident by some activity we've seen in the last week
5 or so, is that not all people understand the concept of the
6 stay or, frankly, how it works in Chapter 9. We have had
7 state court orders issued against the city after the petition
8 date. We've had some other Circuit Court judges express --
9 in other city litigation express some uncertainty about
10 whether the stay applies. We've had vendors with contracts
11 seek to stop shipping, and we have a new officer. We have an
12 emergency manager, and we want to make it clear that the
13 protections of the stay do apply to the emergency manager
14 because, as your Honor indicated, under Section 922(a), the
15 stay does apply to officers of the city for collections of
16 claims against the city.

17 So I would like to address in particular, your
18 Honor, the emergency manager. Under Section 922(a), the
19 stay -- we believe the stay applies to the emergency manager.
20 Under Section 9.2 of PA 436, on appointment, the emergency
21 manager assumed all of the powers and acts for and in the
22 place of and in the stead of the mayor and the city council,
23 meaning the governing bodies of the city. And during the
24 pendency of the emergency manager's appointment, the other
25 governing bodies shall not exercise any of the powers of

1 their officers except as may be specifically authorized in
2 writing by the emergency manager.

3 Furthermore, your Honor, Section 18(1) of PA 436
4 empowers the emergency manager to act exclusively on the
5 city's behalf in this case, so we do believe that he is an
6 officer entitled to the protections of the Chapter 9 stays.

7 We have also requested a clarification, your Honor,
8 because the Code does just simply reference officers of the
9 city, that it would be officers of the city serving in any
10 capacity. Some city officers do serve in other roles on
11 behalf of or at the request of or pursuant to ordinance in
12 other manners in the performance of their duties as officers
13 of the city. For example, Mr. Brown, who is the chief
14 compliance officer, sits on the root cause committee. We do
15 have a finance --

16 THE COURT: Sorry. Sits on what committee?

17 MS. LENNOX: The root cause committee, your Honor.
18 We do have the finance director, the budget director, and
19 corporation counsel of the city that are directors of the
20 service corporations that are formed in connection with the
21 pension certificates. They sit as directors of that
22 corporation through Ordinance Number 03-05 of the City Code,
23 so they are performing their official duties.

24 Finally, with respect to this motion, your Honor,
25 the State of Michigan has asked me to confirm on the record,

1 which I now do, that by this motion the city does not seek to
2 abrogate the exceptions to the stay identified in Section
3 362(b) of the Bankruptcy Code nor do we seek to vitiate the
4 state's powers under Section 903 of the Bankruptcy Code.

5 I think this motion, your Honor, is not uncommon, is
6 fairly straightforward, and merely seeks to confirm the
7 protections that are already granted by the Bankruptcy Code.
8 So with your Court's permission, unless you have questions, I
9 would move to the motion to extend.

10 THE COURT: Please.

11 MS. LENNOX: In this motion, your Honor -- and this
12 is a little more complicated -- the city seeks to extend the
13 stay provisions of Section 362 and 922 of the Bankruptcy Code
14 to certain parties that are or are likely to become targets
15 of claims or lawsuits or other enforcement actions that would
16 have the direct or practical effect of denying the city the
17 protections of the automatic stay imposed by the Code or
18 seeking to collect or enforce a claim against the city. Your
19 Honor, as you may be aware, we have had several pre-petition
20 lawsuits that have attempted these actions. We do describe
21 them in the papers. Some of the objectors describe further
22 developments in their papers. If it would aid the Court, I
23 do have a short summary as a demonstrative exhibit that I
24 could hand the Court that would show the Court the state of
25 play in each of these actions. Would that be helpful to the

1 Court?

2 THE COURT: That's fine. You should assume and all
3 of you should assume in your presentations that I have
4 thoroughly read and reviewed all of your papers, even those
5 that were filed last night.

6 MS. LENNOX: Certainly, your Honor. If your Honor
7 does -- perhaps if your Honor would like to see it --

8 THE COURT: Okay.

9 MS. LENNOX: -- I'll hand it up. Thank you. May I
10 approach, your Honor?

11 THE COURT: Please.

12 MS. LENNOX: Thank you, your Honor. We do have
13 three lawsuits that attempt to prevent either the filing of
14 this case or the conduct of the city's actions within this
15 case. One of the suits has been filed against the governor
16 and the emergency manager. That case -- we don't need a stay
17 extension for the emergency manager. That case is stayed as
18 to the emergency manager. Two other cases have been filed
19 solely against the governor and the state treasurer that seek
20 to prevent the authorization of the filing and to
21 circumscribe the emergency manager's powers within this case.
22 Those are the kinds of things, your Honor -- there's been a
23 flurry of activity. Most of the orders entered in those
24 three cases were entered after -- the TRO's were initially
25 entered after this petition was filed. There were further

1 orders entered by the state court on the 19th of July that
2 amended the two temporary restraining orders, and in the
3 Webster case, which is the one case that involves only the
4 state treasurer and the governor, there was a declaratory
5 judgment action or a declaratory judgment that was filed
6 declaring PA 436 unconstitutional because it could affect the
7 city's rights within this case. Those actions have all been
8 appealed by the state attorney general. The state court has
9 ordered a briefing to go forward in one of the cases and had
10 ordered that the morning of the 22nd, and yesterday the
11 appellate court issued stays in all three of the cases.

12 THE COURT: If the Court grants your relief, what
13 would be the impact on that appeal?

14 MS. LENNOX: We believe, your Honor, that the -- we
15 believe that those cases should be permanently stayed, and
16 the issues that are addressed in those cases regarding the
17 constitutionality of PA 436, because they seek to -- the
18 arguments about constitutionality on PA 436 aren't straight
19 constitutionality issues. They say it's unconstitutional
20 because of what can happen and because of the powers that may
21 be granted under the Bankruptcy Code, and under this Court's
22 jurisdiction and under the emergency manager's rights under
23 Chapter 9, because that is the basis for the challenge to
24 unconstitutionality, we believe those decisions must be made
25 and can only be made by this Court in an action brought

1 before this Court under the supremacy clause and the
2 bankruptcy clause of the United States, so we would expect
3 those actions to be stayed, and any issues that the litigants
4 would have, they would have to bring before this Court for a
5 determination by a court of competent jurisdiction.

6 Unless your Honor has any other questions with
7 respect to the procedural posture of some of these cases, I
8 will move on. It's as a result of these cases -- and these
9 are all certainly public pleadings for which your Honor may
10 take judicial notice under Federal Rule of Evidence 201(c).
11 It's because of these proceedings that we sought to file this
12 motion, and I'd like to explain the -- first of all, I'd like
13 to articulate the standard under which we're proceeding, and
14 then I would like to explain in more detail about why and the
15 three categories of extensions we are seeking.

16 First of all, the standard for a case for extending
17 the stay is that unusual circumstances may exist, and they
18 can exist when there is an identity between the third party
19 and the debtor such that a judgment against the third party
20 would, in effect, be a judgment against the debtor or that
21 the actions taken by the third party would pose a substantial
22 risk to the reorganization of the case. Some courts also say
23 that such actions would significantly impair the
24 administration of this case. So based on the backdrop of
25 that standard, we have asked for the stay to be extended

1 under certain circumstances to three different categories of
2 persons. The first, as your Honor indicated, are the state
3 entities. We are asking the Chapter 9 stay to be extended to
4 the governor, the state treasurer, and the members of the
5 local Emergency Financial Assistance Loan Board for
6 actions -- excuse me -- that seek to enforce claims against
7 the city to interfere with the city's activities in this
8 Chapter 9 case or otherwise deny the city the protections of
9 the Chapter 9 stay and interfere with this Court's
10 jurisdiction over these matters. To be clear, your Honor,
11 because I think there was some confusion about this on the
12 part of some parties, we are seeking to extend the stay
13 protections that the city currently enjoys to the state
14 officials that I identified in the context of lawsuits like
15 the three already filed against state officials that, in
16 substance, seek to interfere with the city's rights as a
17 Chapter 9 debtor and that seriously jeopardize the city's
18 rehabilitation or seek to, in a back-door way, preserve
19 collect, and enforce claims against the city. This motion
20 does not seek to stay state officials' actions. Rather, it
21 seeks to stay third-party actions against state officials.
22 The reasons and the evidence for this, your Honor, I think
23 are well-documented in all of the flurry of activity that has
24 taken place in the last week, and there -- that kind of
25 activity needs to stop. This Court has jurisdiction over

1 this case, this Court has jurisdiction of all federal matters
2 arising in this case, and only this Court has jurisdiction to
3 determine them. Having widespread litigation in various
4 state tribunals that can come to different decisions when
5 it's doubtful that they have jurisdiction to do that can only
6 confuse the parties, confuse the case, and create serious
7 barriers to an efficient administration of this case.

8 The second request that we make for an extension,
9 your Honor, is to extend this Chapter 9 stay to actions or
10 proceedings against employees of the city's that are neither
11 city officers nor inhabitants of the city because Section
12 922(a) refers to inhabitants. Many of our nonofficer
13 employees are inhabitants of the city and could be covered,
14 but many are not, and so we are seeking this extension.

15 Your Honor should know that by virtue of city
16 ordinance 13-11-1, the city does indemnify its employees for
17 lawsuits that arise from the good faith performance of their
18 duties. The city is also self-insured for all of these
19 actions, so the --

20 THE COURT: So this extension seeks -- or would only
21 apply to claims against employees for which the city might be
22 obligated to indemnify?

23 MS. LENNOX: Correct, your Honor. Because the city
24 would be responsible for indemnification because the city is
25 self-insured, we believe that these actions are an action to

1 collect from the city, and we would ask the stay to be
2 extended in this instance.

3 The third request, your Honor, is tied to some of
4 the language in Judge Aquilina's orders, and it's a little
5 unusual, but under the circumstances, we believe it's
6 warranted.

7 THE COURT: Excuse me one second. Before you move
8 on to that, this ordinance that you mentioned --

9 MS. LENNOX: Yes, sir.

10 THE COURT: -- was that in your brief or in your
11 motion?

12 MS. LENNOX: That was not in the brief and the
13 motion, your Honor.

14 THE COURT: Would you give us the number again?

15 MS. LENNOX: Yes, sir. It is Section 13-11-1 et
16 seq.

17 THE COURT: Does anyone have a copy of that?

18 MS. LENNOX: I do not have a copy with me, your
19 Honor, but we can endeavor to get the Court one
20 expeditiously. Actually, your Honor, may I check my
21 materials? I might have a copy of it, if you'd like.

22 THE COURT: Why don't you do that while the
23 creditors are arguing, and you can present it to the Court
24 later, or actually do you know if the City of Detroit
25 ordinances are on Westlaw?

1 MS. LENNOX: I do not know that, your Honor.

2 THE COURT: Anybody know? Somebody says no. All
3 right. I'll need a copy then.

4 MS. LENNOX: Moving on to the third category, your
5 Honor -- and, again, this is a little unusual, and it arises
6 directly out of some of the orders that have been entered in
7 the state court litigation. We request to extend the Chapter
8 9 stay to, quote, "city's" -- "the city's agents and
9 representatives," which are the terms used in the state court
10 orders. That would directly or indirectly seek to enforce
11 claims against the city or, again, to interfere with the
12 city's activities and this Court's jurisdiction in this
13 Chapter 9 case or otherwise deny the city the protections of
14 the Chapter 9 stay. Again, your Honor, it's unusual, but
15 under the circumstances and what's been going on in the past
16 week, we believe it's warranted under the circumstances and
17 does meet the standard that I articulated earlier.

18 That's the extent of the relief that we seek, your
19 Honor. If your Honor has no further questions, then I would
20 reserve remarks for rebuttal.

21 THE COURT: I do have a couple of questions for you.

22 MS. LENNOX: Yes.

23 THE COURT: Can you summarize how you deal with the
24 adversary proceeding issue, the argument that the request to
25 extend the stay under Section 105 of the Bankruptcy Code

1 should have been in the form of an adversary proceeding?

2 MS. LENNOX: Um-hmm. Yes, your Honor. I actually
3 don't -- first of all, in many cases, including cases before
4 this Court in the Collins & Aikman case, the requests for
5 extension of a stay are made by motion. The Sixth Circuit
6 case law that we cite in our brief also suggests that
7 extensions can be made under 105 by motion. In practice,
8 they are often made by motion. I think it is important to
9 make it by motion here, and it is completely impractical to
10 try to file an adversary proceeding with respect to this
11 because of the nature of what we are asking for. For
12 example, with respect to the state entities, we know of three
13 lawsuits that have been filed. We have plaintiffs that we
14 could name in an adversary proceeding, but what we're asking
15 for goes beyond that. We want the stay to apply to these
16 actions or any actions somebody might think to bring in the
17 future. I don't know how to name, you know, unknown
18 plaintiffs in the future. The scope of what we're asking for
19 is broader than that, which is why it makes sense when you're
20 proceeding under Section 362 to move by motion. There's
21 motions to lift stay even though ostensibly that would be an
22 injunctive action, but the motions to lift and motions to
23 extend and motions to enforce are done by motion. Certainly
24 people have done it by the method of preliminary injunction.
25 I don't dispute that, but usually when that happens there is

1 one specific lawsuit that they seek to stay, and that is the
2 sole extension that they're asking for. We are asking for
3 something much broader here, and I think an adversary
4 proceeding procedurally would be improper.

5 We have also cited -- and we believe it to be
6 true -- in our papers that courts often will say -- will not
7 elevate form over substance, and there are cases that we cite
8 in our reply, including the In re. Cannonsburg Environmental
9 Associates case from the Sixth Circuit that says -- where
10 very clearly the action in that case should have been filed
11 as an adversary proceeding, and the judge said, "Look, you've
12 had due process. You've had notice. You have an opportunity
13 to respond. We have had a full hearing of all the views.
14 You have not been prejudiced." That exists in this case as
15 well, your Honor, as evidenced by the long and lengthy
16 objections that have been filed to the motion that we ask as
17 it stands.

18 THE COURT: My second question related to the
19 requirement that the defendants -- that the creditors say
20 apply that to issue the kind of order that you seek, the
21 traditional four factors of a preliminary injunction need to
22 be considered, but in light of the fact that you're over
23 time, I will ask you to address that when you come back
24 after.

25 MS. LENNOX: Thank you, your Honor.

1 THE COURT: All right. So I will allow 15 minutes
2 for each of the creditors that have filed objections. These
3 are the Michigan Council 25 of AFSCME, Syncora, the UAW
4 together with Creditors Robbie Flowers, Michael Wells, Janet
5 Whitson, Mary Washington, and Bruce Goldman, the Detroit
6 public safety unions, if I can refer them -- refer to them by
7 that, and the General Retirement System of the City of
8 Detroit and the Police and Fire Retirement System of the
9 city. It doesn't matter to me, counsel, the order in which
10 you proceed, so I will leave that to you to work out.

11 MS. LEVINE: I'm going to go with alphabetical.

12 THE COURT: Okay.

13 MS. LEVINE: Good morning, your Honor. Sharon
14 Levine, Lowenstein Sandler, for Michigan Council 25 of the
15 American Federation of State, County, and Municipal Employees
16 or AFSCME, as it's been referred to here today.

17 Your Honor, very briefly, it's clear that your Honor
18 has read all the papers, and we very much appreciate that
19 given the short time frame that we've been before this Court.
20 Bankruptcy Code Section 105 is extraordinary relief,
21 extraordinary in that it's only used to enforce rights that
22 already exist under the Bankruptcy Code, so it's not there to
23 create new rights that don't currently exist under the Code.
24 What we have here in a Chapter 9 case, which is more
25 restrictive than, for example, a Chapter 11 case, is the

1 situation where if, in fact, the state has not properly
2 authorized the Chapter 9 filing, there are rights that don't
3 exist under the Bankruptcy Code. If Chapter 9, as has
4 historically been seen through the unconstitutional finding
5 of predecessors to Chapter 9, is really being used here to
6 avoid state constitutional rights, then Chapter 9 in and of
7 itself is potentially unconstitutional. If not, it has to be
8 construed narrowly in order to read it constitutionally. We
9 would respectfully submit that using 105 to find rights that
10 don't otherwise exist, particularly of a constitutional
11 nature, is an extremely broad use of 105. This isn't a
12 situation where we're saying to the controller or the
13 governor or Mr. Orr, you know, don't respond to discovery
14 requests in a state court action in a foreign jurisdiction
15 because we need your attention here. We're taking away very
16 fundamental constitutional rights.

17 Secondly, your Honor, if, in fact --

18 THE COURT: So your argument about the narrow
19 application of Section 105 in this case is really a result of
20 the fact that it's a Chapter 9.

21 MS. LEVINE: Yes, your Honor.

22 THE COURT: It's not an argument that's based on
23 Section 105, *per se*.

24 MS. LEVINE: Yes, your Honor. In a Chapter 11
25 you'll have circumstances, for example, where even in the

1 broader case of a Chapter 11, you won't use Article -- you
2 won't use Section 105 to grant a casino license or a liquor
3 license or tell a utility board they can't change rates, but
4 we have an even narrower situation here because we're in
5 Chapter 9.

6 Two, Chapter 9 can't be used if, in fact, the state
7 has not authorized under its constitution and its laws the
8 Chapter 9 filing. The Chapter 9 filing here is arguably
9 flawed because it intends to go after the pensions. If it
10 goes after the pensions, it arguably violates the state
11 constitution and can't be before this Court, so, again, the
12 issue with regard to whether or not we have an appropriate
13 state constitutional flaw -- sorry. The issue with regard to
14 whether or not we have an appropriate filing is necessarily
15 limited by whether or not we have an appropriate state -- we
16 have an inappropriate state constitutional authorization. If
17 we have an inappropriate state constitutional authorization,
18 that is not simply an implementation tool under 105. That
19 is, in essence, a substantive right that's being creative --
20 created under 105 that does not exist in the state court.

21 In addition to that, your Honor, and also
22 importantly, three, individual citizens of the City of
23 Detroit have the absolute right to protect their own
24 constitutional rights. If we say to them they can't go to
25 the state courts that are there for the protection of their

1 constitutional rights in part, then we are -- then we're
2 using 105 again way more broadly than it gets used in the
3 ordinary course as simply an implementation tool. We're
4 creating more substantive rights. And while this Court
5 has --

6 THE COURT: Well, but why isn't the extended stay
7 that the city seeks here simply a procedural mechanism to
8 funnel such challenges to the Bankruptcy Court and,
9 therefore, does not have the effect of denying citizens or
10 other creditors of their rights to have their constitutional
11 claims heard?

12 MS. LEVINE: Your Honor, if this Court is a court of
13 secondary jurisdiction, no disrespect, with -- but if you
14 look at federalism, comity, abstention, and the state courts
15 are the courts of primary jurisdiction, we would respectfully
16 submit that unlike, for example, determining in a Chapter 11
17 case that there's a validly perfected security interest
18 because you've looked at state law and the UCC is properly
19 filed, we have a very fundamental right here that this Court
20 is being asked to address, so what we're saying is instead of
21 going to the court that's primarily responsible, we're going
22 to come into this Court instead, and it's not as if there's
23 delay or uncertainty with regard to the fact that those
24 matters are going to get heard and considered quickly. We
25 already have state court litigation pending, and the state

1 appellate courts are poised and ready to rule, so there's no
2 reason to divest them of that appropriate jurisdiction under
3 concepts of federalism, comity, and abstention and move that
4 here to a court of secondary jurisdiction on those issues.

5 Your Honor, fourth, with regard to the form over
6 substance, the procedural arguments with regard to 105, in
7 certain circumstances where 105 is being used for things like
8 stopping discovery or minimal things like that, that's one
9 set, but the Federal Rules of Civil Procedure are put in
10 place in order to protect parties and provide due process.
11 There can't be a more fundamental situation where you need to
12 enforce those types of rights than when you're dealing with
13 basic fundamental constitutional rights, and we respectfully
14 submit that even though there are circumstances where
15 expediency mandates the use of 105 quickly, this is not one
16 of those circumstances.

17 Your Honor, the breathing spell under 105 -- the
18 breathing spell under the Bankruptcy Code and the use of 105
19 to extend the breathing spell is only appropriate if, in
20 fact, the underlying bankruptcy is an appropriate bankruptcy.
21 The idea that there's a breathing spell to continue what is
22 potentially an unconstitutional or illegal -- not
23 intentionally, no motive or anything, your Honor, but --
24 proceeding is clearly not anything that 105 was designed to
25 implement.

1 Your Honor, we would respectfully submit that these
2 are very, very fundamental rights, and unlike a Chapter 11
3 case where you have a defined benefit plan where if, in fact,
4 it is terminated, there's federal insurance under the PBGC up
5 to \$57,000, or if you have a multi-employer plan, even if an
6 employer withdraws, the beneficiaries themselves are
7 protected, here our members who participate at most are at or
8 below \$19,000 a year. Clearly there's no safety net. These
9 issues are hard issues. The collateral advantage to sending
10 this back to the state court for an appropriate decision is
11 that the conversations which we believe should have been
12 happening more robustly before the filing could happen now.
13 We respectfully -- we thank your Honor for the time, and we
14 appreciate your Honor's consideration.

15 THE COURT: Thank you. Sir.

16 MR. BENNETT: Good morning, your Honor. Ryan
17 Bennett of Kirkland & Ellis on behalf of Syncora Guarantee
18 and Syncora Capital Assurance. Your Honor, as we attempted
19 to describe in our papers, my client insures, in some cases
20 owns certain securities called the certificates of
21 participation, which were taken out in 2006 to fund some of
22 the city's pension liabilities. We also insure a swap --
23 four swaps related to those securities that are tied to the
24 interest rate, the floating interest rate associated with
25 them.

1 We object to the debtor's stay motions to the extent
2 they contain broad and unqualified language that we feel will
3 impair our client's rights against a number of nondebtor
4 third parties under our various transactional documents, as
5 your Honor could probably tell from --

6 THE COURT: Can you identify some of those parties
7 for us?

8 MR. BENNETT: Yes, your Honor. So under the
9 transactional documents, which we attempted to describe in
10 the papers, there are parties called service corporations,
11 which are separate stand-alone entities with their own
12 directors to whom we believe they owe us fiduciary duties in
13 our role as stakeholders. At very least they owe a duty to
14 the corporations themselves, and our rights are derivative
15 from them. We also have swap counterparties who are parties
16 to a swap agreement and a swap insurance agreement where
17 we've got third-party beneficiary rights to those
18 arrangements, and the city is not even a party.

19 THE COURT: Well, let me ask you this question --

20 MR. BENNETT: Yes, sir.

21 THE COURT: -- about those parties.

22 MR. BENNETT: Um-hmm.

23 THE COURT: To the extent the Court agrees with you
24 and then your client pursues those parties, to what extent,
25 if any, would your client's success on those claims impact

1 claims against the city?

2 MR. BENNETT: Your Honor, that's unclear to us from
3 this vantage. I mean we're still developing our litigation
4 strategy and our claim strategy, and --

5 THE COURT: This is not a question of your strategy.
6 This assumes your strategy is successful.

7 MR. BENNETT: Right.

8 THE COURT: The question then remains, though, if
9 you are successful in your claims after being allowed to
10 pursue them --

11 MR. BENNETT: Um-hmm.

12 THE COURT: -- to what extent would that impact
13 claims against the city perhaps by those parties?

14 MR. BENNETT: Um-hmm. Yeah. That's unclear to us.
15 I mean perhaps in the case of service corporation directors,
16 to the extent that there's an indemnity, as Ms. Lennox
17 pointed out -- I think that's where your Honor is going --
18 there may be an impact there, but, again, I haven't looked at
19 the ordinance. I don't know if it applies to these
20 individuals, so I'm not sure, but that could be the case.

21 With respect to other parties, swap counterparties,
22 for example, I mean they're not party -- the debtor is not a
23 party to the swap agreement. While there may be some ripple
24 effect down the road that I'm sure counsel may try to
25 explain -- debtor counsel may try to explain, I mean that's

1 unclear to us how we'd ultimately get there, sir.

2 THE COURT: Okay.

3 MR. BENNETT: Yeah. As I said, you know, really
4 putting aside the procedural issue, which I do believe the
5 debtor failed to comply with, you know, your Honor did --
6 there was discourse from the bench to the podium in Collins &
7 Aikman where I believe my firm actually brought forward that
8 motion, and we agreed to drop it because we did not bring it
9 forward in the proper procedural way. We think the city
10 should also be obligated to do that, particularly where in
11 circumstances like this with respect to our client, you
12 know -- and we just found this out, your Honor, when we got
13 handed this little handout at the start of the hearing that
14 it looks like they're trying to enjoin with -- you know, to
15 the same standards of a preliminary injunction the suit that
16 they brought against us prior to the petition date with
17 probably the same amount of notice that we got here today.
18 This suit, which is listed on here -- and, again, oddly
19 enough it's a suit brought by Detroit against us, not like
20 everybody else where they brought the suit against Detroit or
21 one of the extended defendants, you know, we're just not sure
22 what that means, and I'm sure they'll come and tell us, but,
23 in any event, we feel like we've not received notice of this,
24 and we're entitled to some process there to the extent
25 they're trying to impair our rights, which I'm sure they are.

1 And, your Honor, that really sums it up from our
2 point. I mean largely our filing was a reservation of
3 rights. We wanted to make clear that to the extent this is
4 trying to be used at some later point to prejudice my client
5 in whatever strategies that we -- strategies we employ to
6 exercise our property and contractual rights, we do not want
7 to be impaired.

8 One final point, your Honor, is that the city has
9 filed that motion for the investment -- or the forbearance
10 agreement that your Honor posted up for a hearing on August
11 2nd. We just wanted to get a little clarity from your Honor
12 because that does impact some rights of ours.

13 THE COURT: I saw your motion, and I will enter an
14 order clarifying that for you later today or tomorrow.

15 MR. BENNETT: Great. Thank you, sir. Nothing
16 further.

17 MS. PATEK: Good morning, your Honor. Barbara Patek
18 appearing on behalf of the public safety unions that are
19 comprised of the Detroit Fire Fighters Association, the
20 Detroit Police Command Officers Association, the Detroit
21 Police Lieutenants and Sergeants Association, and the Detroit
22 Police Officers Association. We have filed a concurrence and
23 a limited objection in the two motions before the Court, and
24 I will address them serially. With respect to the stay
25 motion, we agree that the stay applies, and we agree in

1 concept with the issuance of the stay order as requested by
2 the city. We want to clarify -- and I believe the Court
3 asked the question of the city's counsel -- that that stays
4 all further proceedings in the state court action, including
5 the pending application for leave to appeal that has been
6 filed by the attorney general. And I believe the city,
7 having submitted itself or consented to the application of
8 362 and 922, that the Sixth Circuit law on that issue should
9 control.

10 With respect to the extension of the stay, we concur
11 in that as well, and we have, in fact, asked for some
12 affirmative relief, and I want to at the outset of my
13 argument address the question raised by the Court with
14 respect to the preliminary injunction standard. I think in
15 this case -- I mean there obviously is some flexibility in
16 Section 105 that the Court has, but if you look at those four
17 factors that govern preliminary injunctions, this is a case
18 where the public interest trumps all of them, and we, on
19 behalf of public safety unions, strongly believe that that --
20 that the public interest is at stake and that the stay
21 provided by this Court will give the parties the breathing
22 space to perhaps have that robust discussion that was
23 mentioned by -- in one of the earlier arguments.

24 We do want to make it clear that in concurring in
25 the relief requested, the public safety unions are not

1 conceding that the city is eligible to be a debtor in this
2 case. We believe there are very, very serious constitutional
3 arguments on that issue as set forth in our papers. We
4 simply believe that this Court is the proper forum because of
5 the intersection of state and federal constitutional law and
6 Bankruptcy Code issues, some of which are novel and
7 uncharted.

8 The other issue that we want to address with regard
9 to the stay extension deals -- there are three points. One,
10 we're asking for the affirmative relief of broadening the
11 stay to include particularly the employees and retirees of
12 the public safety unions and some former employees who may be
13 the subject now or in the future of lawsuits and whose only
14 source of indemnification would be the city.

15 Second, we want it clarified because we do not
16 believe that anybody is giving up any claim by coming before
17 this Court that all claims against any nondebtor parties are
18 preserved and, third, that to the extent that those actions
19 are stayed, that the protections of 108(c) apply. Those are
20 essentially the relief that we're requesting.

21 THE COURT: Let me ask you to go back to number one
22 for a second. You mentioned former employees, so there are
23 lawsuits against former employees for which the city might be
24 liable for indemnification?

25 MS. PATEK: And to clarify, your Honor, I don't know

1 about -- I don't have a list of lawsuits, but I'm concerned
2 with the situation, and we're really tailoring this narrowly
3 to -- that the lawsuit relates to their employment by the
4 city and acting, you know, within the scope of their
5 employment with the city and --

6 THE COURT: Well, is it your position that under the
7 ordinance that Ms. Lennox identified, former employees are
8 also entitled to indemnification?

9 MS. PATEK: Your Honor, I'm going to be candid with
10 you. As I have not seen that ordinance, I don't know the
11 answer to that question, and I'd be happy --

12 THE COURT: All right. Well, perhaps Ms. Lennox can
13 address that. Thank you.

14 MS. PATEK: Thank you, your Honor.

15 MR. GORDON: Good morning, your Honor. Robert
16 Gordon of Clark Hill on behalf of the Police and Fire
17 Retirement System and the General Retirement System of the
18 City of Detroit.

19 THE COURT: Yes, sir.

20 MR. GORDON: Thank you, your Honor.

21 THE COURT: Your Honor, while many of the arguments
22 that have been made, particularly by counsel for AFSCME, are
23 positions that we have concurred in, the thrust of our papers
24 I think focuses on a slightly different issue to some extent,
25 and for purposes of this argument I'd like to focus on those

1 for your Honor.

2 It's our position that the stay motions presume
3 facts that are not in evidence. There is a threshold issue
4 here under Section 109(c) (2) of the Bankruptcy Code that
5 needs to be dealt with first, 109(c) (2) requiring that in
6 order for a municipality to avail itself of the protections
7 of Chapter 9, it must have received valid state authorization
8 to do so. The situation here I believe is unique. I'm not
9 aware of any other case really on point. We have a situation
10 where there is Michigan state constitutional protection for
11 accrued pension benefits. We have in this state a statutory
12 framework in which the governor is required to provide the
13 authorization for the filing of a Chapter 9. The governor is
14 also sworn to uphold the state constitution. So our position
15 is, as we've indicated in our papers, that if the governor
16 cannot directly abrogate -- unilaterally abrogate
17 constitutional rights under Michigan's constitution, he also
18 respectfully cannot do indirectly what he cannot do directly,
19 so, in other words, he cannot authorize a Chapter 9
20 bankruptcy filing that has as an explicit stated goal, among
21 others, to impair and diminish accrued pension benefits which
22 are protected by the state constitution. Since he doesn't
23 have that authority, the issue isn't one of whether there's
24 an action that's voidable here. It is void, void ab initio,
25 and it is as if it never occurred. So our argument is that

1 there isn't -- to talk about the stay and talk about the
2 Court's jurisdiction presumes that there has been a valid
3 state authorization, and there hasn't been any valid state
4 authorization.

5 Now, as to that issue, a state court has ruled on
6 that issue. Judge Aquilina in the Ingham County Circuit
7 Court in the case of Webster v. Snyder ruled and issued a
8 declaratory judgment, not an injunction, a declaratory
9 judgment against the governor, who is a nondebtor party, and
10 at the time and as of today there is no stay and was no stay
11 against declaratory judgment against the governor, and the
12 Court entered a declaratory judgment ruling along the lines
13 of what I just argued and declaring that the governor did not
14 have authority to authorize this Chapter 9 bankruptcy filing.
15 To be clear, that matter has not been stayed by the Court of
16 Appeals. The Court of Appeals stayed certain TRO orders that
17 have been entered by Judge Aquilina, but the declaratory
18 judgment is a final order that has not been stayed. So the
19 question becomes where should the 109(c)(2) issue be
20 addressed, and we have submitted that it ought to be
21 addressed by the state courts because unlike the other
22 eligibility requirements under Section 109(c) for determining
23 whether a debtor is eligible to proceed under Chapter 9,
24 Section 109(c)(2) is specifically a creature of state law,
25 and the Bankruptcy Code and Chapter 9 evinces a deep and

1 abiding respect for federalism and Tenth Amendment concerns,
2 and in that light we think it is appropriate to allow the
3 state judiciary, which is a co-equal partner of the executive
4 branch and of the legislative branch in this state --

5 THE COURT: Okay. So how do you deal with the
6 city's argument that 28 U.S.C., Section 1334, gives this
7 Court exclusive jurisdiction over the bankruptcy petition
8 and, therefore, over the eligibility issues under Chapter 9?

9 MR. GORDON: Again, your Honor, our position would
10 be that it presumes something that is not in evidence here.
11 It presumes that there has been a valid petition filed, and
12 there simply has not been a valid petition. That's our
13 argument. Our argument as to supremacy clause --

14 THE COURT: But Chapter 9 makes -- Chapter 9 makes
15 that issue an eligibility question, doesn't it?

16 MR. GORDON: I guess it depends on how you look at
17 it, but from our point of view, if an action has been void ab
18 initio, it's a circular issue to some extent. I understand
19 your point, your Honor. It's a bit of a circular issue, but
20 from our position, we think that to assume in the first
21 instance that there's been valid action by the governor and
22 that this Court should determine it presumes something that
23 hasn't yet been established. If, however, of course, this
24 Court feels that it has jurisdiction to address that issue,
25 we would submit that -- again, without waiving the argument

1 that this really should be addressed in the state court, we
2 would submit that the 109(c)(2) issue of whether there's been
3 valid state authorization is the first issue this Court
4 should address and not the stay motions and that that issue
5 ought to be addressed upon full briefing in the context of a
6 Section 921(c) motion to dismiss. I think that that comports
7 with the process.

8 THE COURT: Let's talk about that. What's the
9 prejudice to your client or the interest that your client
10 seeks to vindicate by having this issue resolved before any
11 other issue?

12 MR. GORDON: Having which issue resolved, your
13 Honor?

14 THE COURT: This issue of whether the governor
15 constitutionally authorized the filing. Why does your client
16 need that to be resolved before anything else?

17 MR. GORDON: Well, I think as a matter of just
18 jurisprudence to be proceeding with issues regarding a stay
19 when there's a fundamental issue of subject matter
20 jurisdiction, to me it would make sense to address the issue
21 of whether there is subject matter jurisdiction before we
22 proceed with all sorts of matters that may be of no effect.
23 They may be completely void, so I think that we --

24 THE COURT: Okay. So you're not representing to the
25 Court, for example -- and I don't mean to suggest this --

1 that your clients were intending to file a lawsuit against
2 the city to enforce this constitutional right imminently, are
3 you, or are you?

4 MR. GORDON: I'm sorry. Can you repeat the
5 question, your Honor?

6 THE COURT: I asked you how your clients would be
7 prejudiced by dealing with this issue of the
8 constitutionality of this filing later in the context of
9 eligibility, and you talked about issues of jurisprudence,
10 just prudence, so I asked you are you, therefore, not
11 suggesting to the Court that your client had a lawsuit
12 against the city in mind to file imminently to enforce this
13 constitutional right, which would be stayed if the Court
14 granted the motion?

15 MR. GORDON: Understood, your Honor. No, we do not.

16 THE COURT: Okay.

17 MR. GORDON: No, we do not. So, your Honor, again,
18 we think that this is a threshold issue that ought to be
19 dealt with not on the fourth business day of the case but
20 through a little bit more of a robust process if this Court
21 is inclined to --

22 THE COURT: Well, let's talk about that even. If
23 the Court grants this motion, it would be, wouldn't it,
24 without prejudice to your right to seek relief from the stay
25 and/or abstention?

1 MR. GORDON: Yes, but, again, the question is
2 whether there's a stay at all because there's a question of
3 the validity of the ongoing bankruptcy, so --

4 THE COURT: Well, but if those rights are preserved,
5 the prejudice of which you speak is reduced, not eliminated,
6 but reduced.

7 MR. GORDON: Possibly, although abstention is not
8 as -- certainly is not the same argument, of course.

9 THE COURT: But I'm just asking.

10 MR. GORDON: Yes.

11 THE COURT: Yes.

12 MR. GORDON: I understand. Your Honor, so that is
13 our position on that. As far as the actual request for stay
14 relief, our papers speak for themselves to a great extent. I
15 won't repeat what's been said here. I would say this,
16 though. As to the stay confirmation order, I think it ought
17 be explicit that if all they're asking -- all the city is
18 asking for is confirmation, then it should be clear that it's
19 not expanding anything. If it's just the confirmation, then
20 we don't object to it because they're not doing -- by
21 claiming that they're confirming the stay, they're stating
22 that they are not expanding and exceeding the --

23 THE COURT: Right.

24 MR. GORDON: -- scope of the Bankruptcy Code --

25 THE COURT: Okay.

1 MR. GORDON: -- so that would be our comment on
2 that. As far as the request to extend the stay, you know,
3 again, on day four it's very unclear to know how far they're
4 intending to stay this. There has been no discussion between
5 the parties. I've now heard from another counsel, who just
6 preceded me, that she would like to see the stay extended to
7 other people as well. Again, I would submit that there ought
8 to be an opportunity to discuss that. The argument has been
9 made that an adversary proceeding is necessary to enforce a
10 105 stay. The arguments that say that a 105 -- that you
11 don't need to have an adversary proceeding, that form should
12 not rule over substance, we understand those arguments, but
13 nothing should overrule due process, and I think it's really
14 an issue of due process. We don't know the contours of
15 really at the end of the day -- the papers are not clear as
16 to what the contours are, what they're seeking to extend to,
17 and, quite frankly, they haven't -- the papers do not
18 establish unusual circumstances here. The Eagle-Picher case
19 is inapposite to what is at issue here. All that's been
20 alleged is a sort of murky mere closeness of relationship
21 between the governor and the city, which we submit is
22 insufficient. The declaratory judgment that was entered by
23 Judge Aquilina has not been stayed, but this motion for stay
24 extension is seeking to do just that, and to stay a
25 declaratory judgment is really to essentially eviscerate the

1 declaratory judgment. There's no action to be taken, so to
2 stay it is to basically vacate it. We submit that that's not
3 appropriate under the circumstances here. And we've raised
4 issues about Rooker-Feldman and so forth, and, again, we
5 would submit that if the Court were going to discuss the
6 extension of the stay, it should not extend to affect the
7 rights of parties relative to the declaratory judgment and
8 its winding its way through the state court system.

9 THE COURT: Thank you, sir.

10 MR. GORDON: Thank you, your Honor.

11 MS. CECCOTTI: Good morning, Judge Rhodes. Babette
12 Ceccotti, Cohen, Weiss & Simon, LLP, for the UAW, and with me
13 is Mr. Wertheimer, counsel to the Flowers plaintiffs. As
14 your Honor is hopefully aware, the Flowers plaintiffs and the
15 UAW filed a joint objection, and Mr. Wertheimer is here in
16 case the Court has any questions regarding the Flowers
17 lawsuit, and I will state the objection of the UAW from the
18 U -- representing the UAW. Excuse me, your Honor.

19 As is evident from our objection, we have largely
20 joined -- in the interest of brevity and not overwhelming the
21 Court with duplicative papers, we have largely joined in the
22 arguments already briefed and addressed by Ms. Levine on
23 behalf of AFSCME. I do have a couple of other points that I
24 would like to make but, in particular, perhaps revisit some
25 of the ground already covered in part by other counsel in

1 response to Ms. Lennox's presentation on a couple of matters
2 that I found quite extraordinary and think that it is worth
3 focusing on again.

4 First, the notion that this Court could permanently,
5 permanently stay the state court lawsuits is I would submit
6 well beyond any power of this Court under 105 or 362 or any
7 other ground being suggested to you by the city. These are
8 not -- as Ms. Levine stated, we're not here about an
9 implementation tool to keep others from diverting the city's
10 attention and running around and trying to collect on claims.
11 As you've heard this morning already, the issues raised by
12 the state -- by the state court lawsuits go to -- they not
13 only go to the eligibility of the city to file, they -- it
14 is -- it's actually -- it's more fundamental than that.
15 These are issues that arise under state law.

16 Chapter 9, of course, reflects dual sovereignty and
17 in part reflects that most significantly in the eligibility
18 criteria, which requires that the municipality be authorized
19 under state law or by a governmental officer. The key here
20 is under state law. The pre-petition lawsuits address the
21 state law issues as to whether the state law bases under
22 which the governor issued his authorization for the filing
23 violate the Michigan state constitution to the extent that
24 the authorization does not except out the pension benefits.
25 These are totally state court issues. So if we look at 1334,

1 just to take that point, while this Court may have original
2 and exclusive jurisdiction of all cases under Title 11, the
3 use of the word "cases" must be read specific to the case
4 that we have, and the case that we have here is a Chapter 9
5 case with all of the dual sovereignty attributes of that,
6 including the eligibility criteria, which fundamentally are
7 grounded on an authorization under state law, so I do not
8 believe that 1334(a) can be read to simply write out of the
9 statute the unique character, if you will, of Chapter 9 vis-
10 a-vis the other chapters of the Bankruptcy Code, which is so
11 dependent on the state court authorization to --

12 THE COURT: So is it your argument that this Court
13 doesn't have the jurisdiction to decide this constitutional
14 issue or that it is concurrent?

15 MS. CECCOTTI: Your Honor, I was getting to that
16 when I was going to move on to 1334(b).

17 THE COURT: Okay.

18 MS. CECCOTTI: To the extent that anybody would
19 argue or perhaps decide or say that the eligibility features
20 and the ability to file a motion to dismiss based on those
21 features would be a proceeding under a case, then 1334(b)
22 makes clear that the District Courts have original but not
23 exclusive jurisdiction on those questions so that while this
24 Court arguably would have jurisdiction in the context of a
25 motion under 109(c), it is not exclusive, and the state -- to

1 the extent the issue of the state's authorization and whether
2 that authorization should have excepted the pensions
3 consistent with or under -- directly covered under -- the
4 prohibition under the Michigan state constitution, at a
5 minimum, if we're talking about a proceeding, the state
6 courts -- the state courts and this Court would both consider
7 that issue, and now here we do get into important and serious
8 questions of federalism and abstention. The state courts
9 already have the authorization issue teed up in the three
10 lawsuits in slightly different fashions, but the gravamen of
11 all of them, if you boil it down, is the scope of the
12 authorization issued by the governor and whether the failure
13 to except the pensions -- the accrued pensions from the
14 authorization to use Chapter 9 violated the state
15 constitution. Therefore, the Court's prudential or juris --
16 the Court's prudential or discretion perhaps to take that
17 issue up would be guided, as it is in other matters where a
18 party comes in to lift the stay to have a state court proceed
19 with a lawsuit perhaps of the type that Ms. Levine mentioned,
20 perhaps a pre-petition state lawsuit having to do with a
21 particular piece of property or a lien, those issues all come
22 into play and, in fact, weighing the factors that apply in
23 those cases, it is not always the case that the Bankruptcy
24 Court keeps those matters. It depends on the issues. It
25 depends on five or six or seven factors, depending on which

1 court you're in.

2 THE COURT: Okay. Well, let's focus on this issue
3 and ask whether there are any cases that have addressed the
4 argument that you make that this specific element of
5 eligibility should be resolved in the state court rather than
6 in the Bankruptcy Court.

7 MS. CECCOTTI: Your Honor, I cannot standing here
8 today cite to a case, but I'm very confident that there are
9 such cases, perhaps not in the -- necessarily in the Chapter
10 9 context given the relative paucity of jurisprudence under
11 Chapter 9, but there are myriad cases that have arisen, for
12 example, under Chapter 11 where by balancing the various
13 factors, including the importance of respecting federalism
14 and noninterference with the state court's ability to
15 determine matters under their own laws --

16 THE COURT: Well, but isn't it the case that every
17 Chapter 9 case which has been dismissed for lack of proper
18 authorization -- and there have been a few -- have been
19 dismissed by the Bankruptcy Court based on the Bankruptcy
20 Court's determination of authorization.

21 MS. CECCOTTI: That's correct, but how many of those
22 cases -- and we'd have to look, but I'm going to place a
23 small bet here and say none, involved --

24 THE COURT: We don't permit that here.

25 MS. CECCOTTI: -- three lawsuits, three lawsuits

1 filed on -- against slightly different but all -- but
2 theories that -- the gravamen of which are the same? So in
3 those cases, I'm not sure they're instructive because they
4 wouldn't say -- they wouldn't tell us that the Bankruptcy
5 Court versus those prefiling lawsuits was the only -- the
6 appropriate --

7 THE COURT: Well, but to what extent is --

8 MS. CECCOTTI: -- or certainly not the only place.

9 THE COURT: To what extent is your argument -- would
10 your argument be diminished if there weren't such lawsuits,
11 if the --

12 MS. CECCOTTI: I think -- I think --

13 THE COURT: -- individuals here simply requested
14 this Court to permit the state court --

15 MS. CECCOTTI: Your Honor, the essence of the
16 objection is, in fact, that these lawsuits exist and what
17 they are based in. If the lawsuits did not exist, we would
18 have a different argument before you today.

19 THE COURT: Okay.

20 MS. CECCOTTI: But they do exist, and the fact that
21 they exist we think is simply -- must be the primary
22 consideration by this Court in determining the relief and we
23 respectfully submit denying the relief requested by the city.

24 I would like to make two other points, one of which
25 I regret we didn't raise in our papers, but it struck me

1 reading -- when I listened to Ms. Lennox this morning
2 articulate for the Court the relief that they are seeking
3 with respect to matters that haven't been lodged as lawsuits.
4 I believe she read that the -- paragraph 20 of her papers in
5 looking for prospective relief or -- against entity -- people
6 or entities that might become targets. I did notice that the
7 proposed form of order merely states that the motion is
8 granted, and I would submit to the Court that if any type of
9 injunction is issued -- and we strongly urge the Court not to
10 grant the motion, but to any extent any -- the Court deems
11 any type of stay possible, any such relief should provide
12 fair notice to parties who have not yet done anything as to
13 the conduct that is potentially going to be covered by the
14 order, and we submit that, at least based on the filings
15 here, your Honor does not have sufficiently specific language
16 to issue such an order.

17 Finally, the proposed relief is overly broad even
18 with respect to the pre-petition lawsuits to the extent that
19 they ask this Court to simply rule that those lawsuits are
20 stayed. I wish to -- we do want to point out to the Court
21 that the lawsuits -- the Flowers lawsuit certainly and
22 perhaps some of the others have named the State of Michigan
23 as defendants. We don't understand the city's request for
24 relief in terms of a stay extension to extend to the State of
25 Michigan; therefore, the stay -- a stay is not -- has not

1 been -- such a stay has not appropriately been sought and if
2 the Court again were to grant a stay, that, again, the relief
3 is --

4 THE COURT: Let's assume there --

5 MS. CECCOTTI: -- would be overly broad.

6 THE COURT: Let's assume there's no order staying a
7 lawsuit against the state. What does that do for your
8 clients?

9 MS. CECCOTTI: The State of Michigan is a defendant,
10 and --

11 THE COURT: What relief can the Court order against
12 the state that would help your clients?

13 MS. CECCOTTI: To permit -- the lawsuits would be
14 able to proceed against the state.

15 THE COURT: Right, but what ultimate relief could
16 the state court grant against the state that would help your
17 clients?

18 MS. CECCOTTI: There I would need to ask the counsel
19 for the Flowers plaintiffs --

20 THE COURT: Okay. Okay.

21 MS. CECCOTTI: -- if you don't mind, just because my
22 familiarity is not primarily with those cases.

23 THE COURT: No, not at all.

24 MS. CECCOTTI: Those were my points, your Honor.

25 THE COURT: Thank you. Would you like to try to

1 address that for me, sir?

2 MR. WERTHEIMER: Yes, your Honor. William
3 Wertheimer, your Honor, appearing on behalf of the Flowers
4 plaintiffs. In answer to that last question, first of all,
5 it is correct that the Flowers case, the state is a defendant
6 as an entity, and the same is true of the Webster and the
7 pension systems case. All three cases seek declaratory
8 judgments, and a declaratory judgment can issue against the
9 state because --

10 THE COURT: Right. But what does that do --

11 MR. WERTHEIMER: -- it's a declaratory judgment --

12 THE COURT: What does that do for your clients?

13 MR. WERTHEIMER: It depends upon what effect that
14 judgment would have with this Court as a practical matter.

15 THE COURT: Oh, so you're thinking it may have some
16 res judicata or Rooker-Feldman effect?

17 MR. WERTHEIMER: Well, you know, your Honor, your
18 Honor, our basic point is that this is a state law issue that
19 we brought to the state courts before this proceeding was
20 brought in good faith attempting to get an order and a ruling
21 from the state courts, and we would want to continue to do
22 that, and we think we can do that even under the motion they
23 filed, if it's granted, given the fact that the state as an
24 entity remains as a defendant in the three cases.

25 THE COURT: All right. Thank you.

1 MR. WERTHEIMER: I would also reiterate that -- a
2 point previously made, that the stays that were issued
3 yesterday by the Court of Appeals did not cover at all the
4 declaratory judgment, which was a final judgment, which
5 entered in the Webster case as --

6 THE COURT: Someone mentioned that.

7 MR. WERTHEIMER: The state has not yet taken an
8 appeal, but the activities at the Court of Appeals all have
9 to do with the applications for leave of the nonfinal orders.

10 THE COURT: Thank you for clarifying that, sir.

11 MR. WERTHEIMER: Yes, your Honor. I have one point.
12 We filed yesterday a brief along with a declaration from me,
13 and that declaration dealt principally with one issue, and
14 that is the debtor in its initial pleadings and in its motion
15 specifically indicated that the orders issued in state court
16 were -- all three orders were ex parte, and that is
17 consistent with the debtor's statements today talking about
18 target, et cetera. In other words, we're the bad guys out
19 there as they would characterize the bad guys in a typical
20 Chapter 11 case. We are not the bad guys. We did not do
21 anything ex parte.

22 THE COURT: I have to -- I have to stop you. I
23 didn't read anything in the city's papers that suggested your
24 clients were the bad guys.

25 MR. WERTHEIMER: Well, they -- your Honor, the

1 city's papers stated that in all three cases we obtained ex
2 parte injunctive relief. In none of those three cases did we
3 obtain ex parte injunctive relief. In fact, we gave the
4 state and its officers notice of everything we did, and the
5 matter was fully briefed. Nothing happened ex parte. Let me
6 leave it at that.

7 THE COURT: Okay.

8 MR. WERTHEIMER: And, finally, consistent with that,
9 in my declaration I indicated that I was attaching the
10 transcript from the proceedings of July 18. I neglected to
11 do that electronically. We provided copies to everybody last
12 night by e-mail. We will make sure that that's also done
13 electronically, and I'd like to, if I may, approach the bench
14 and provide a copy to the Court.

15 THE COURT: Yes, sir. That's fine. Thank you.

16 THE CLERK: Thank you.

17 MR. WERTHEIMER: That's all I have, your Honor.

18 Thank you.

19 THE COURT: Thank you. And before we proceed with
20 the city's rebuttal, I'd like to ask if there's anyone in the
21 courtroom who would also like to address the Court. And
22 briefly, please, sir.

23 MR. BRENT: Good morning, your Honor. My name is
24 Nathaniel Brent. I represent myself pro se in a current
25 lawsuit against the City of Detroit in this Eastern District

1 of Michigan in front of Julian Cook. One thing that I'm
2 surprised at with all of these learned attorneys here is
3 nobody has mentioned the issue of this declaratory judgment
4 actually collaterally estops the City of Detroit from
5 relitigating the issue of whether they had authority to even
6 file this petition.

7 THE COURT: Actually, that is mentioned in the
8 briefs. It's more than mentioned. It's argued forcefully in
9 the briefs.

10 MR. BRENT: That's not my primary argument here,
11 your Honor. My primary argument is regarding the stay that's
12 been in place and the extensions they're seeking to grant a
13 blanket stay for any Detroit employee, present or --

14 THE COURT: Let me ask you what is your claim and
15 who is it against?

16 MR. BRENT: My claim is against the City of Detroit
17 police officers and two police officers in both their
18 individual and official capacity for violations of my Fourth
19 Amendment rights. The issue here, your Honor, is this case
20 has been pending for the last two and a half years.

21 THE COURT: Um-hmm.

22 MR. BRENT: And now that the stay is in effect and
23 they're trying to extend this even further, the issue
24 cannot -- of liability cannot even be litigated in order to
25 bring it in front of this Court.

1 THE COURT: Um-hmm.

2 MR. BRENT: Granted, as for the execution of any
3 orders to enforce any judgment entered would clearly be
4 within the jurisdiction of this Court. I don't contest that
5 at all. The issue of whether or not they are liable and
6 committed the violations of the Fourth Amendment, those are
7 issues that should be allowed to be continued to be
8 litigated.

9 THE COURT: Um-hmm.

10 MR. BRENT: On that issue, even if an award is
11 granted, it would not be part of the reorganization of the
12 City of Detroit in the first place. The City of Detroit's
13 charter -- in Chapter 9 of the City of Detroit's charter they
14 have what is called a risk management fund, which is a
15 dedicated fund which is required to have a minimum of \$20
16 million in it to pay for civil lawsuits and workmen
17 compensation claims. This isn't part of the reorganization.
18 This is going to exist regardless.

19 As for their claim regarding the indemnifying
20 employees under Chapter 13-11-1, that gives the City of
21 Detroit the option to indemnify. It does not require that
22 they indemnify these employees.

23 THE COURT: Um-hmm.

24 MR. BRENT: And, now, in my present case, City
25 Council did vote to elect to indemnify the employees.

1 THE COURT: Um-hmm.

2 MR. BRENT: However, this is the city's option.

3 This isn't a requirement of law that they indemnify these --

4 THE COURT: Um-hmm.

5 MR. BRENT: -- just as -- my lawsuit is also against
6 various state actors within the State of Michigan, which --
7 but, again, their wanting to extend this to them would
8 prevent me from litigating my claims against the state
9 officials that have already been denied immunity, and it is
10 currently pending. Those portions they've appealed to the
11 Circuit Court. So now that they're trying to extend this
12 stay, now the Sixth Circuit Court of Appeals case of Brent
13 versus Wayne County, et al. will be stayed as well where the
14 different state defendants -- state employees have uphill
15 decision to deny their qualified and absolute immunity.

16 THE COURT: The defendants in your particular suit
17 are both city employees and other defendants are state
18 employees?

19 MR. BRENT: Yes, and there's also state contractors
20 involved in the lawsuit.

21 THE COURT: Contractors also. Thank you, sir.
22 Would anyone else like to be heard?

23 MR. SANDERS: Good morning, your Honor. My name is
24 Herb Sanders, and I represent the plaintiffs in the case of
25 Phillips versus Snyder pending before this Court, Case Number

1 2:13-CV-11370, before Judge Steeh. That is a case that
2 challenges the constitutionality of PA 436. Motions for
3 summary -- for at least one summary disposition or summary
4 judgment argument have been scheduled. As I initially read
5 the request for stay extension motion filed by the city, it
6 appeared that the city was seeking an extension of stay
7 concerning financial matters that were being litigated, but
8 pursuant to the oral presentation of the city's attorney, it
9 concerns me when she has indicated -- and I paraphrase --
10 that she seeks relief concerning any litigation that might
11 interfere with the city's rights as a Chapter 9 debtor. And
12 I would suggest to the Court to the extent that it might be
13 proposed or suggested that the litigation which I have
14 referenced in which the constitutionality of PA 436 is to be
15 determined by another judge in this court interferes with the
16 rights of the city as a Chapter 9 debtor, that that case not
17 be included as part of the stay order that this Court would
18 issue. I believe it's imperative to this community, to this
19 state that those issues be determined and, in fact, should
20 probably be determined before the bankruptcy proceeds, but I
21 would encourage the Court to not give a broad order if any
22 order were to issue that would be inclusive of matters that
23 are not financial matters such as there are other matters
24 that I know that the union, AFSCME, and others are a part of
25 seeking FOIA requests from the city, injunctive relief as it

1 relates to these types of matters, and I would ask the Court
2 to consider not giving such a broad order --

3 THE COURT: Um-hmm.

4 MR. SANDERS: -- that that type of information could
5 not be obtained and we could not have a determination as to
6 the constitutionality of PA 436 by this Court.

7 THE COURT: Um-hmm.

8 MR. SANDERS: Thank you, your Honor.

9 THE COURT: Thank you. Sir, can you just give me
10 your name again, please?

11 MR. SANDERS: Herb Sanders.

12 THE COURT: Mr. Sanders. Thank you, sir.

13 MR. SCHNEIDER: May it please the Court, Matthew
14 Schneider, chief legal counsel to the Attorney General. I'm
15 here on behalf of the State of Michigan. Your Honor, I'm
16 here for a very, very limited purpose. As counsel to the
17 debtor has indicated, they are not seeking to abrogate the
18 exceptions in Section 362(b), and I know that this is a
19 motion regarding Section 362, so our position is is that if
20 the Court is, indeed, inclined to grant the motion regarding
21 the stay, that the Court's order reflect that nothing in the
22 Court -- nothing what the Court is doing will actually
23 abrogate the exceptions afforded under 362(b).

24 THE COURT: Is there a specific exception you're
25 concerned about?

1 MR. SCHNEIDER: Well, your Honor, the state has a
2 great interest in ensuring that our departments and agencies
3 can continue their administrative functions, which is really
4 not unusual, and we just want to be sure that that's the
5 case, and that's all I have, your Honor.

6 THE COURT: Well, but which provision in Section
7 362 (b) --

8 MR. SCHNEIDER: It's subsection (4).

9 THE COURT: -- is implicated? Oh, (4). Okay.

10 MR. SCHNEIDER: Subsection (4) --

11 THE COURT: Of course.

12 MR. SCHNEIDER: -- which indicates that, you know,
13 commencement or continuation of an action or proceeding by a
14 governmental unit isn't going to -- isn't going to impair a
15 governmental unit to have its regulatory power in --

16 THE COURT: It's the police powers exception.

17 MR. SCHNEIDER: Correct.

18 THE COURT: Thank you, sir.

19 MR. SCHNEIDER: Thank you.

20 THE COURT: Would anyone else like to be heard? All
21 right. Ms. Lennox.

22 MS. LENNOX: Thank you, your Honor.

23 THE COURT: And by the way, my very efficient staff
24 provided me by computer here a copy of the ordinance.

25 MS. LENNOX: Oh, thank you, your Honor. I have one,

1 too, so that --

2 THE COURT: I'm all set.

3 MS. LENNOX: Great.

4 THE COURT: And it does raise a question. The
5 language appears to be discretionary as concerns indemnity.
6 Yes?

7 MS. LENNOX: It is discretionary, but it's the
8 city's policy that if the employee is performing its duties
9 in good faith in the scope of its employment that indemnity
10 will issue, and that discretion now is the discretion of the
11 emergency managers, your Honor, which I would point out I was
12 very --

13 THE COURT: Well, what impact does the fact that
14 it's discretionary rather than mandatory have on your
15 argument that the stay should be extended to employees who
16 might not otherwise be covered?

17 MS. LENNOX: I think, your Honor, it doesn't have
18 much of an impact at all because, as I said, it's a matter of
19 city policy that if the employee was performing his or her
20 duties in good faith and the conduct that gave rise to the
21 action occurred in the performance of those duties, then the
22 indemnity will issue.

23 THE COURT: Is that a policy in writing that we can
24 refer to, or is it just a matter of --

25 MS. LENNOX: I would have --

1 THE COURT: -- this is what the city always does?

2 MS. LENNOX: I would have -- I would have to check
3 with corporation counsel on that, your Honor, but regardless,
4 the extension should certainly apply to the employees for
5 whom the city has agreed to indemnify for the reasons that I
6 stated earlier.

7 I would like, your Honor, just at the outset -- I
8 was very remiss because we didn't make opening statements to
9 neglect to introduce to you the emergency manager, who is
10 here in the courtroom today. Mr. Orr is here. Obviously he
11 has a great interest in these proceedings. Okay. Thank you,
12 your Honor.

13 Perhaps a couple of housekeeping matters before I
14 get into argument. First, your Honor, I do have a copy of
15 the order that was issued by the Court of Appeals in the
16 State of Michigan in the Webster case in which the
17 declaratory judgment was entered, and perhaps that order --
18 the declaratory judgment has been appealed, and perhaps we
19 were misreading the order, but the order does say that the
20 motion for stay pending appeal is granted, and the Circuit
21 Court's July 18th, 2013, temporary restraining order and all
22 further proceedings are stayed, so that's where we got that
23 understanding, your Honor. I have a copy if your Honor would
24 like to see it.

25 THE COURT: Please.

1 MS. LENNOX: May I approach?

2 THE COURT: Yes.

3 MR. CANZANO: Judge, I know it's a little bit
4 unorthodox here, but I --

5 THE COURT: I have to ask you to stand by the
6 microphone because of the limitations of our equipment here,
7 sir. Sir, actually this microphone, and my apologies to you
8 for that inconvenience.

9 MR. CANZANO: I'm the attorney that got the
10 declaratory judgment, John Canzano, representing the --

11 THE COURT: Canzano?

12 MR. CANZANO: -- Webster plaintiffs. I can speak
13 very briefly to why the declaratory judgment is not stayed.

14 THE COURT: Okay. Let me ask you --

15 MR. CANZANO: There's four appeals.

16 THE COURT: Let me ask you -- let me ask you to do
17 that after Ms. Lennox speaks.

18 MS. LENNOX: As another housekeeping matter, your
19 Honor, I believe when Mr. Bennett was speaking, he indicated
20 that his firm in the Collins & Aikman case had filed a motion
21 to extend the stay but then they withdrew it because it was
22 procedurally improper. Respectfully, I would beg to differ.
23 I have the transcript of that motion. That motion was heard.
24 It was argued before your Honor, and it was denied. If your
25 Honor would care to see the transcript, I do have it with me.

1 THE COURT: No, thanks.

2 MS. LENNOX: Thank you. In our colloquy, your
3 Honor, as an initial matter, you had asked what if the
4 preliminary injunction standards applied, and, as I
5 indicated, if you're going to apply preliminary injunctions,
6 you sort of have to have a matter to --

7 THE COURT: That wasn't exactly my question. My
8 question was how do you deal with the argument that they
9 should apply?

10 MS. LENNOX: I think, your Honor, under the Section
11 105 extension case law that exists out there where you extend
12 by motion, the courts have created a standard that is
13 different than the preliminary injunction four-part standard,
14 and, in fact, in cases in which this is presented by motion,
15 the preliminary injunction standards aren't even discussed,
16 and that standard is the standard that I --

17 THE COURT: Well, but didn't Eagle-Picher address
18 them?

19 MS. LENNOX: Eagle-Picher was brought by a
20 preliminary injunction. That was a preliminary injunction
21 case. It noted in dicta that many courts permit extensions
22 of the stay by motion, but that particular case they had
23 brought by preliminary injunction, so, therefore, they went
24 through the standards. If we had to go through the standards
25 here, I think we meet them, and if your Honor is interested,

1 I can articulate that for you.

2 THE COURT: Go ahead.

3 MS. LENNOX: But in any event, I don't think we need
4 to go through them under the circumstances, but if we had to
5 meet the preliminary injunction standards, I believe that
6 there would be -- at least with respect to the three lawsuits
7 that we have out there, I think there would be a great chance
8 of success on the merits because by the plaintiffs attempting
9 to condition the authorization to file a municipal bankruptcy
10 on that municipal -- that municipality's foregoing rights
11 under Chapter 9 once in Chapter 9 is a violation of the
12 bankruptcy clause and the supremacy clause. I think we'd win
13 on that, your Honor.

14 Secondly, with respect to irreparable harm, if these
15 actions are not stopped, the city would be irreparably
16 harmed. We would be preventing -- we would be prevented from
17 accessing necessary protections that we are otherwise wholly
18 entitled to access under Chapter 9 and under applicable law,
19 and it would be harmed by our inability to have the
20 appropriate forum, this forum, to decide the matter because
21 the matter presents federal issues for federal jurisdiction.
22 The issues that are presented have to do with can the
23 authorization be conditioned upon limiting a municipality's
24 rights in Chapter 9. That clearly and squarely presents
25 federal issues of this Court's jurisdiction that can only be

1 decided by this Court under the supremacy and the bankruptcy
2 clauses, so without -- an inability for us to pursue that
3 would be irreparable harm to the city. A state court simply
4 does not have jurisdiction to decide those.

5 Third, your Honor, the injunction, if one would call
6 this an injunction, is not going to harm others because, as
7 your Honor pointed out, they do have a forum, indeed the only
8 appropriate forum, in which to decide the issues that can
9 arise only in a bankruptcy case, issues like eligibility,
10 contract rejections, what should go in a plan of adjustment,
11 all of which are addressed by the three lawsuits that are
12 filed. As your Honor pointed out, these litigants will have
13 due process. They will have their day in court. They will
14 have these issues decided, but they will have them decided in
15 the tribunal with proper jurisdiction.

16 And then fourth, your Honor, public policy clearly
17 favors the resolution of issues that exist only under the
18 Bankruptcy Code in the Bankruptcy Courts. Any attempts to
19 have courts that are not of competent jurisdiction determine
20 these issues actually, your Honor, would offend public
21 policy, so while I don't think that we need to go through the
22 preliminary injunction standards in this case and by virtue
23 of the relief that we asked for, if we had to, we would meet
24 them.

25 Now, your Honor, I think I would like to, if it

1 please the Court, address sort of collectively the arguments
2 that were made about should the state courts determine this
3 or should the federal courts determine this, and
4 ultimately -- certainly at least what Ms. Levine was arguing
5 down to, they're arguing the merits of eligibility, and, as
6 your Honor pointed out, that's not before the Court today.
7 Nothing prevents -- as your Honor also pointed out, nothing
8 prevents anybody from seeking to lift the stay in any
9 particular case in any particular matter, and that's a
10 question that can be addressed to this Court.

11 More particularly -- and I'd like to go into this in
12 some detail -- the Court has jurisdiction to hear and
13 consider state court matters in this court. Since the days
14 of Erie versus Tompkins back in 1938, federal courts have
15 applied state law when required to determine the matters
16 before them. It's very clear that now that this case is
17 filed, this Court -- under Section 921 of the Bankruptcy Code
18 and under its jurisdiction granted by 28 U.S.C. 1334(a) and
19 (b), this Court is the only court that is authorized to
20 determine eligibility issues. As part of the eligibility
21 issues, Section 109(c)(2) necessitates the interpretation of
22 state law, and Bankruptcy Courts have done that in virtually
23 every Chapter 9 case that has been filed. In Jefferson
24 County they went through the Alabama statutes for authorizing
25 the case. In the New York City Off-Track Betting Corp. in

1 New York in 2010, the Bankruptcy Court found that the
2 governor had adequate power under the state constitution to
3 issue the order authorizing the filing. In the Suffolk
4 County Regional Off-Track Betting Corporation case, an
5 Eastern District of New York in 2011, the Court, interpreting
6 state law, found that the debtor did not comply because the
7 county resolution violated the -- Suffolk's County's
8 authority and was unconstitutional and dismissed the
9 petition. In the Barnwell County Hospital case in the
10 District of South Carolina in 2012, they examined state law
11 to determine whether the County Hospital Board had
12 authorization to file Chapter 9, and they determined -- they
13 did the inquiry as to whether the authorization was void in
14 light of the state constitutional prohibition against dual
15 office holding, and they concluded it was not. That case,
16 along with other cases, absolutely involved an interpretation
17 of state constitutional issues.

18 So given that the Bankruptcy Court's authority
19 includes the authority to decide state law issues when
20 required in exercising its jurisdiction under the Bankruptcy
21 Code and it is competent to do so, there is absolutely no
22 reason to disrupt the efficient resolution of this bankruptcy
23 case by having the state court cases go forward.

24 Your Honor, if you look at PA 436, Section 18.1,
25 nothing in that authorization statute mentions pensions. It

1 simply mentions a process by which the city had to go through
2 to -- for the governor to make a determination whether we
3 were authorized to file nor, if your Honor would read it, is
4 anything in the governor's authorization letter conditioning
5 the filing on taking any action, not taking any action, or it
6 does not even mention what might happen to pensions in this
7 case, so this Court clearly has jurisdiction to determine the
8 state constitutionality issues.

9 On the other hand and respectfully, the state courts
10 have no jurisdiction to determine the issues of authorization
11 or eligibility under Section 109(c) (2) of the Bankruptcy
12 Code. They have no jurisdiction to determine whether this
13 city had the right to file this case or, more importantly,
14 the rights that this city can exercise now that it is in
15 bankruptcy, and that, your Honor, is exactly what the
16 plaintiffs seek to do in their constitutionality challenges
17 in the three actions that are pending in state court. This
18 is not a secondary jurisdiction matter. This is a matter of
19 primary jurisdiction under Section 1334(a), (b), and Section
20 921 of the Bankruptcy Code for this Court. This is the only
21 Court competent to make those determinations.

22 Mr. Gordon suggested that we don't need to decide
23 the stay issues today because the -- because we should wait
24 to determine eligibility first. First of all, I would say
25 that there's no prejudice to pensioners in this case because

1 pensions are continuing to be paid. There's no change to
2 that, so the delay shouldn't be a factor. Secondly,
3 eligibility has nothing to do with the fact that the
4 automatic stay is in effect. It arose by operation of law on
5 the day that we filed the petition on July 18th, and it is in
6 effect. The only motions before this Court today have to do
7 with that stay that's already in effect, so there's nothing
8 improper about determining those matters today.

9 It has been suggested that Judge Aquilina's
10 declaratory judgment in the Webster case -- remember, your
11 Honor, the Webster case is the case in which the city is not
12 named. The city is not a defendant. It is a case only
13 against the governor and the state treasurer, so the city is
14 not a party. The city didn't litigate any of the issues.
15 Collateral estoppel, therefore, cannot apply to the city in
16 the declaratory judgment in the Webster case. We're not
17 bound by that. Moreover, I would suggest to your Honor that
18 that is one trial court's view -- trial court's view -- that
19 was issued without briefing, without argument, without
20 reasoning, and in haste. That decision is not even binding
21 on any other trial court in the State of Michigan let alone
22 any courts of higher jurisdiction, and it is certainly not
23 binding on this Court.

24 One other procedural issue that I would like to
25 point out that Mr. Gordon and none of the other objectors did

1 point out, but it is noted on the summary sheet that I
2 gave -- the demonstrative that I gave to your Honor earlier
3 today. The pension funding case, the GRS and PFRS case that
4 Mr. Gordon's firm -- in which Mr. Gordon's firm represents
5 the plaintiffs, has been removed to federal court. The city
6 removed it because that is the one case in which the city is
7 the defendant. That case was removed to federal court on
8 July 21st, and so it was removed to the Western District of
9 Michigan, the United States District Court for the Western
10 District of Michigan. State courts don't even have
11 jurisdiction over this case anymore. And in that case the
12 city moved to transfer venue to the District Court in this
13 district so that it will eventually be moved down to your
14 Honor.

15 With respect to a concern that Ms. Ceccotti raised,
16 we are not seeking to stay the courts. We are seeking to
17 stay the litigation by extending the stay protections to the
18 defendants without -- the effect of that -- that that would
19 have, your Honor, is to prevent the parties from acting. We
20 are not seeking to do anything extraordinary under court's
21 jurisprudence.

22 Finally, your Honor, with respect to the arguments
23 that Mr. Bennett made on behalf of Syncora, I think there may
24 be some confusion on Syncora's part. Neither of the motions
25 seek to assert or to extend the stay in favor of the swap

1 counterparties, which are banks that have nothing -- no
2 relationship with the city, or the service corporations
3 themselves or any other party related to those entities other
4 than a couple of city officers that serve as directors of the
5 service corporations, and they do that because they're
6 required to do that in the performance of their duties as
7 city officers pursuant to a city ordinance, which is
8 Ordinance Number 0305. We are not seeking to protect the
9 corporations themselves. We are not seeking to protect any
10 swap counterparties, so I want to make that clear. Syncora
11 offers no evidence about how it will be prejudiced,
12 particularly because, again, nothing in the motions prevents
13 Syncora from coming in and seeking to lift the stay if one is
14 imposed.

15 We also don't seek in the stay confirmation motion
16 to seek relief behind actions to enforce a claim against the
17 debtor. Paragraph 4 of the proposed order makes that very
18 clear. It simply parrots the statute, and that's in the stay
19 confirmation motion. Because the city is a party to the
20 Syncora suit, the only stay issue that would apply to that
21 would be the stay confirmation issue. We're not seeking any
22 extension with respect to that lawsuit, and, frankly,
23 counterclaims may be asserted in that case, which would be
24 stayed, and the case started, your Honor, because Syncora was
25 illegally attempting to trap some of the city's revenues, so,

1 you know, if that kind of behavior would continue, that
2 absolutely is a stay violation.

3 Let me just check my notes quickly, your Honor. All
4 right. I believe, your Honor, that that's all I wanted to
5 address.

6 THE COURT: I have to ask you one additional
7 question. How do you deal with the argument made that if
8 your motions are granted as you have requested, lawsuits
9 against the State of Michigan or to the extent the lawsuits
10 are against the State of Michigan, they would not be stayed?

11 MS. LENNOX: The State of Michigan, your Honor, acts
12 through its officials. The State of Michigan -- well, with
13 respect to the three lawsuits that we are talking about right
14 now -- and I can't talk in the -- you know, I'd have to know
15 the facts for the other ones, but we -- again, when we
16 tailored this relief, we tailored it narrowly to what we knew
17 was out there and what we could anticipate coming out there.
18 We believe and we reserve the rights in our reply to argue
19 that the lawsuits themselves, including the ones in which the
20 city is not a named defendant, are direct violations of the
21 automatic stay, direct violations under 362(a)(3) and (6),
22 and if that's the case, then those cases and any actions
23 taken within those cases are void ab initio. So to the
24 extent that the named parties in there are the governor and
25 the treasurer, the state acts through those officials. Those

1 are the officials that were sued. That is what we're
2 addressing. Again, we are only seeking to extend the stay to
3 lawsuits that affect this case, not to any other actions
4 against state entities. The State of Michigan can only act
5 through its officials, and we believe that the relevant
6 officials are identified in our pleading.

7 THE COURT: Another sort of scope question was
8 raised by Mr. Sanders. If your motions are granted here,
9 what impact would you argue that would have or should have on
10 the lawsuit in which he represents parties who assert the
11 unconstitutionality of PA 436?

12 MS. LENNOX: Your Honor, I don't have, as we stand
13 here, enough facts about what Mr. Sanders' lawsuit says, the
14 arguments that it makes, or the defendants in that case,
15 whether the city or any city officials are defendants in that
16 case, so I would have to reserve judgment until I knew the
17 facts about his lawsuit.

18 THE COURT: He's also concerned, perhaps a bit more
19 hypothetically, that lawsuits, for example, to seek
20 disclosure under the Freedom of Information Act and other
21 sorts of administrative matters should not be stayed. What's
22 your position on that?

23 MS. LENNOX: Well, if I understood what Mr. Sanders
24 said, he said those were lawsuits against the city. If
25 they're lawsuits against the city, they're already stayed. I

1 don't have to extend the stay to do that. It exists. If
2 they want to seek relief from the stay with respect to their
3 lawsuits, they can certainly come before the Court and do it.

4 THE COURT: All right. Thank you.

5 MS. LENNOX: Thank you, your Honor.

6 THE COURT: All right. At this time -- oh, I want
7 to hear from you, sir. Yes. Thank you.

8 MR. CANZANO: Thank you. Just a very brief point of
9 clarification. In the -- the three orders that were entered
10 by the Court of Appeals yesterday are in three different
11 cases, 317286, which is Webster; 317285, which is Flowers;
12 and 317284, which is the General Retirement System case.
13 Each of those were emergency appeals of TRO's that were
14 issued on last Thursday, the 18th. There was another case
15 where there was a straight claim of appeal of the final
16 declaratory judgment, which is 317292. There is no order in
17 that case at all. That claim of appeal is going forward as a
18 normal claim of appeal.

19 THE COURT: Um-hmm.

20 MR. CANZANO: So -- and if you look at the three
21 orders, you can see that the Webster refers only to July
22 18th. The other two refer to July 18th and 19th actions, and
23 the declaratory judgment was issued in Webster on the 19th.
24 The transcript of the 19th reflects that the TRO in Webster
25 was vacated when the declaratory judgment was entered.

1 THE COURT: All right. The Court -- was there
2 something you wanted to add, sir?

3 UNIDENTIFIED SPEAKER: Your Honor, I would just add
4 that counsel in her reply indicated that the state judge
5 issued her orders with no briefing. They were fully briefed.

6 THE COURT: All right. The Court would propose to
7 take a recess at this time to consider these motions and
8 reconvene at two o'clock for a decision, so that is what
9 we'll do, and we'll be in recess for now.

10 THE CLERK: All rise. Court is in recess.

11 (Recess at 11:47 a.m., until 2:11 p.m.)

12 THE CLERK: All rise. Court is in session. Please
13 be seated. Recalling Case Number 13-53846, City of Detroit,
14 Michigan.

15 THE COURT: Counsel appear to be present. As the
16 Court explained earlier, there are two motions before it
17 today, the stay confirmation motion and the stay extension
18 motion. As to both motions, several creditors object and
19 contend that the motions should be denied on the grounds that
20 this bankruptcy case is not properly before the Court because
21 the governor did not authorize the bankruptcy consistent with
22 state law and the state constitution. The Court concludes
23 that this objection to both of these motions must be
24 overruled.

25 The Court concludes that the issue of eligibility

1 and each of the elements relating to eligibility are within
2 this Court's exclusive jurisdiction under 28 U.S.C., Section
3 1334(a). Under that statute, United States District Courts
4 have original and exclusive jurisdiction of all cases under
5 Title 11, that original and exclusive jurisdiction referred
6 to the Bankruptcy Courts of each jurisdiction under 28
7 U.S.C., Section 157. Our District Court has referred all
8 matters relating to bankruptcy jurisdiction to the Bankruptcy
9 Court under Local Rule 83.30. This is not a proceeding
10 within 28 U.S.C., Section 1334, over which Bankruptcy Courts
11 would have concurrent jurisdiction with the state courts.

12 I was just advised that my microphone wasn't
13 working, but now it is; right?

14 THE CLERK: Yes.

15 THE COURT: Did we have a record of the first part
16 of that, Letrice? I can't hear you.

17 THE CLERK: No.

18 THE COURT: We don't?

19 THE CLERK: No.

20 THE COURT: Okay. So we'll start over.

21 Fortunately, we didn't get too far in it, and hopefully I can
22 say the same thing twice. Okay.

23 So there are two motions before the Court, the stay
24 confirmation motion and the stay extension motion. Certain
25 creditors object to both motions on the grounds that this

1 bankruptcy case is not properly before the Court because the
2 governor's authorization to file this bankruptcy case was not
3 consistent with state law and the state constitution. The
4 Court concludes that this objection to both motions must be
5 overruled.

6 The issue of eligibility and the elements that the
7 debtor needs to establish in order for the Court to find its
8 eligibility are within this Court's exclusive jurisdiction
9 under 28 U.S.C., Section 1334(a). Under that section, the
10 District Courts have, quote, "original and exclusive
11 jurisdiction of all cases under Title 11," close quote. The
12 District Court's jurisdiction in bankruptcy cases can, in the
13 District Court's discretion, be referred to the Bankruptcy
14 Court within its jurisdiction under 28 U.S.C., Section 157,
15 and our District Court has referred cases in its bankruptcy
16 jurisdiction to the Bankruptcy Court under Local Rule 83.30.

17 The Court further concludes that this issue of
18 eligibility would be determined in the case and not in a
19 proceeding within Section 1134(b) of Title 28 and over which
20 the state courts and the Bankruptcy Courts would have
21 concurrent jurisdiction. The reference in Section 1334(b) to
22 a proceeding is a technical reference and refers to adversary
23 proceedings such as preference actions, fraudulent transfer
24 actions, lien avoidance actions, et cetera. The effect of
25 Section 1334(a) of Title 28, therefore, is that all of the

1 elements of eligibility in a Chapter 9 case must be decided
2 by the Bankruptcy Court exclusively. In this regard, the
3 Court would note that there is no case law that holds
4 otherwise.

5 It has been argued here today that perhaps this
6 exclusive grant of jurisdiction to the Bankruptcy Court to
7 determine eligibility in the context of a Chapter 9 case is
8 unconstitutional. However, the Court finds nothing in the
9 Tenth Amendment or in the more ambiguous concept of
10 federalism to support that argument, and there is no case law
11 that holds that. Accordingly, the Court rejects that
12 argument as well. In this regard, the Court would note, for
13 what it's worth, that in all of the other recent Chapter 9
14 cases with which we are all familiar, it was the Bankruptcy
15 Court that determined all of the eligibility issues raised by
16 the parties there.

17 The Court concludes that the Congressional grant of
18 jurisdiction to the Bankruptcy Court to determine the issue
19 of eligibility of a municipal debtor is entirely consistent
20 with the bankruptcy clause of the Constitution and the
21 supremacy clause as well. In this regard, the Court would
22 further note that there is nothing in the jurisdictional
23 provisions of Title 28 or elsewhere that suggests that
24 Congress intended for the state courts to have concurrent
25 jurisdiction on the issue of eligibility to file a Chapter 9

1 case, so these arguments by the creditors to both motions are
2 overruled.

3 Turning then to the stay confirmation order, it
4 appears to the Court that the only potential issue -- the
5 only other potential issue here is whether the emergency
6 manager, Kevyn Orr, is an officer within the meaning of 11
7 U.S.C., Section 922, because if he is, then the stay already
8 applies to him, and it is appropriate for the stay
9 confirmation order to say that. If he's not an officer, then
10 stays of action against him would be appropriate, if at all,
11 only in the context of the stay extension motion.

12 The record fully establishes that Kevyn Orr is the
13 emergency financial manager of the City of Detroit pursuant
14 to Public Act 436 of 2012, Michigan Compiled Laws, Section
15 141.1541 and following. Pursuant to Section 141.159(2),
16 quote, "Upon appointment, an emergency manager shall act for
17 and in the place and stead of the governing body and the
18 office of chief administrative officer of the local
19 government. The emergency manager shall have broad powers in
20 the receivership to rectify the financial emergency and to
21 assure the fiscal accountability of the local government and
22 the local government's capacity to provide or cause to be
23 provided necessary governmental services essential to the
24 public health, safety, and welfare," close quote. It goes on
25 to say, quote, "Following the appointment of an emergency

1 manager and during the pendency of the receivership, the
2 governing body and the chief administrative officer of the
3 local government shall not exercise any of the powers of
4 those offices except as may be specifically authorized in
5 writing by the emergency manager or as otherwise provided by
6 this act and are subject to any conditions required by the
7 emergency manager," close quote.

8 Therefore, according to Michigan law, the emergency
9 manager steps into the shoes of the governing body and its
10 chief administrative officer. Accordingly, the Court readily
11 finds that the emergency manager is an officer within the
12 definition and scope of Section 922.

13 It does not appear that there are any other
14 substantive objections -- I should say any substantive
15 objections to this finding, and, accordingly, the Court
16 concludes that it is appropriate to grant the stay
17 confirmation motion and to have it state explicitly that the
18 emergency manager, Mr. Orr, is an officer covered by the
19 Section 922 stay.

20 The other motion is the stay extension motion. This
21 motion is filed pursuant to Section 105 of the Bankruptcy
22 Code, and it seeks an extension of the stay otherwise
23 effective as to acts against the city under Section 362 and
24 as to acts against the city, its officers and inhabitants,
25 under Section 922, and it seeks the extension to the

1 governor, the treasurer, the loan board, and their agents and
2 representatives. As to this motion, it is initially argued
3 that principles of federalism, as embodied in the Tenth
4 Amendment, require a more stringent analysis of a request for
5 a Section 105 injunction in a Chapter 9 case compared to a
6 Chapter 11 case. Again, the Court overrules this argument
7 and finds nothing in either the Tenth Amendment or principles
8 of federalism that suggests that any different or more
9 stringent analysis should be invoked. The Court concludes,
10 rather, that in either event, whether Chapter 9 or Chapter
11 11, the Court has the authority to extend the scope of the
12 stay when necessary and appropriate. Section 105(a) of the
13 Bankruptcy Code provides that the Bankruptcy Court may,
14 quote, "issue any order, process, or judgment that is
15 necessary or appropriate to carry out the provisions of this
16 title," close quote, and the Sixth Circuit has held that a
17 court may utilize its equitable power under Section 105(a) to
18 extend the automatic stay to nondebtor entities in unusual
19 circumstances, Parry versus Mohawk Motors of Michigan, 236
20 F.3d 299, Sixth Circuit, 2000, and American Imaging Services,
21 Inc. versus Eagle-Picher Industries, Inc., In re. Eagle-
22 Picher Industries, Inc., 963 F.2d 855, Sixth Circuit, 1992.
23 The Court also so held in Patton versus Bearden, 8 F.3d 343,
24 Sixth Circuit, 1993.

25 The case law is ambiguous on the standard that the

1 Court should apply in evaluating a request to extend the stay
2 under Section 105. Is it this unusual circumstances test, or
3 is it the more traditional preliminary injunction four-factor
4 test? The Court concludes that it is unnecessary to resolve
5 that ambiguity in this case. Rather, the Court concludes
6 that under either of those standards, it is appropriate to
7 find that the stay extension motion requested by the debtor
8 should be granted.

9 The case law applying the unusual circumstances test
10 has noted that it should be and has been rare for a court to
11 find unusual circumstances. Some courts say that the
12 automatic stay may be extended if the unusual circumstances
13 make the interests of the debtor and the nondebtor defendant
14 inextricably interwoven. In this case, the Court readily
15 finds that the debtor -- the interests of the debtor and the
16 interests of those potential defendants to whom the debtor
17 seeks to extend the automatic stay are so intertwined that
18 the unusual circumstances test is met. Any attempt by really
19 anyone to litigate the issues that the creditors have raised
20 or might raise regarding this bankruptcy case or the debtor's
21 eligibility to file this bankruptcy case against other
22 nondebtor parties such as the governor or the treasurer or
23 others may well have an ability on the debtor's -- may well
24 have an impact -- excuse me -- on the debtor's ability to
25 reorganize, so the Court finds that the unusual circumstances

1 test is met.

2 The Court further concludes that, to the extent it's
3 applicable, the traditional four-factor preliminary
4 injunction test is met as well. Traditionally those four
5 factors are the likelihood of success on the merits of the
6 plaintiff's claim, the extent to which the moving party will
7 be prejudiced if the motion is denied, the extent to which
8 the party opposing the motion will be prejudiced if the
9 motion is granted, and any public interest considerations.
10 The case law firmly establishes that these are not each
11 elements that must be met. They are, rather, factors and
12 considerations that the Court should take into account in
13 weighing its discretion on whether to grant the requested
14 relief.

15 Addressing first, therefore, the issue of the
16 debtor's likelihood of success on the merits, in the
17 circumstances of this case, the Court finds that it would be
18 entirely inappropriate to comment on the likelihood of the
19 debtor's success on the merits of any of the substantive
20 issues relating to eligibility or plan confirmation except to
21 say that the issues raised are very serious questions and
22 that these questions should be addressed, to the extent that
23 they are raised, in the context of eligibility to file this
24 case or perhaps in the plan confirmation context. In any
25 event, the state court proceedings that the city of court --

1 specifically seeks to stay and enjoin are proceedings which
2 could conceivably have and may well have an impact on the
3 bankruptcy case here and the administration of this case or
4 on the debtor's assets. As the Sixth Circuit noted in Eagle-
5 Picher, it is enough for this Court to find that there are
6 serious questions going to the merits, and the Court
7 certainly so finds here.

8 The Court further noted in that case, interestingly,
9 the following, quote, "The bankruptcy court's primary
10 emphasis on the last three factors," parenthetically not
11 including the likelihood of success on the merits, "for
12 granting a preliminary injunction was not error, especially
13 when considering the source of its authority to grant such an
14 injunction emanates from section 105 whose purpose is to
15 assist the court in carrying out the provisions of the
16 Bankruptcy Code, one of which is to oversee the
17 reorganization of a debtor's business. In addition, as we
18 stated in Friendship Materials, a court may, in its
19 discretion, grant a preliminary injunction even when the
20 plaintiff fails to show a strong or substantial probability
21 of ultimate success on the merits of his claim, but where he
22 at least shows serious questions going to the merits and
23 irreparable harm which decidedly outweighs any potential harm
24 to the defendant if an injunction is issued." As noted, the
25 second question -- oh, first, before concluding the first

1 element, the Court is -- the Court would find readily that
2 this factor, therefore, weighs in favor of granting the
3 requested stay and injunction.

4 The second factor, as noted, is the extent to which
5 the city will suffer prejudice if the requested injunction is
6 denied. The Court readily finds that the city will suffer
7 substantial prejudice if this stay is denied. The record
8 reflects that the creditors have already obtained temporary
9 restraining orders and a declaratory judgment and that the
10 city has felt compelled to appeal those. Clearly, addressing
11 these issues both in the state court and in this Bankruptcy
12 Court is costly, expensive, and inefficient, and really
13 causes prejudice not only to the debtor but to the other
14 parties as well. There is also, of course, a danger of
15 potentially inconsistent results. So, accordingly, again,
16 the Court concludes that this favor -- does weigh in favor of
17 granting the requested injunction.

18 The third factor is the harm to others, which will
19 or may occur if the requested injunction is granted. Again,
20 the Court readily finds that the creditors who have opposed
21 this extension will not really be harmed at all if this
22 motion is granted. There is no prejudice to the substantive
23 rights of any party if this stay is extended, as the city has
24 requested. All of the arguments, issues, and claims that
25 they could and might seek to make they can raise in this

1 court. None of their procedural and substantive rights to
2 make their claims and arguments in this course -- in this
3 court in the course of this case are foreclosed by granting
4 this motion. Further, the Court will fully retain the
5 opportunity and right of any creditor to seek relief from
6 this stay on an individual case-by-case basis, which, of
7 course, if granted, will permit that creditor to litigate
8 whatever their issues are in the appropriate court. So,
9 again, the Court concludes that this factor weighs in favor
10 of granting the requested injunction.

11 The fourth consideration is whether granting the
12 requested injunction would serve the public interest. In
13 normal two-party litigation or even in many bankruptcy cases,
14 this is not a significant consideration, but in the context
15 of a Chapter 9 case and especially this Chapter 9 case, the
16 Court concludes that it is probably the most important factor
17 of all. Granting this motion will, the Court readily
18 concludes, enhance the debtor's likelihood of reorganization.
19 It will also create efficiency. It will also assist in
20 expediting this reorganization, and it will reduce the city's
21 costs as well as those of other parties. Accordingly, the
22 Court finds that this injunction is in the public interest,
23 and for all of these reasons, the Court readily concludes in
24 its discretion that the requested extension of the stay under
25 Section 105 should be granted.

1 Now, several creditors have objected on the grounds
2 that the debtor should have filed an adversary proceeding to
3 obtain this relief. The Court concludes that this objection,
4 too, should be overruled. The Court is satisfied that there
5 was sufficient notice and opportunity to be heard, and the
6 Court further observes that the imposition of this stay will
7 only have the effect of requiring those parties who seek
8 relief from it to file a motion for relief from it. And in
9 rejecting this objection, the Court notes that there is
10 substantial merit in the city's concern that it would be
11 impossible for it to file an adversary proceeding naming as
12 defendants all of the parties that might be impacted by this
13 injunction. Indeed, it would be a procedural and
14 administrative nightmare.

15 Finally, the Court rejects the argument that Section
16 105 cannot serve as the basis for an extended stay because it
17 creates new rights. The Court finds that this injunction
18 does not create any new rights. It simply assists the Court
19 in making the bankruptcy process more efficient and gives the
20 Court control over all of the issues that will have to be
21 resolved through the course of the bankruptcy. In this
22 regard, the Court would further note that no cases have
23 rejected a Section 105 stay extension on this ground.

24 Before concluding, the Court would like to review
25 and state on the record what is not being decided here today.

1 Perhaps this is just as important for the record to reflect
2 as what is being decided here today.

3 The Court is making no ruling whatsoever on whether
4 the City of Detroit is eligible to be a debtor in Chapter 9.
5 The Court is making no ruling on whether the state
6 constitution prohibited the emergency manager's appointment
7 or prohibited the emergency -- excuse me -- prohibited the
8 governor from authorizing this Chapter 9 filing without
9 excepting from it the constitutionally protected pension
10 rights of its citizens. The Court is not ruling on whether
11 the state court orders that were entered either pre- or post-
12 bankruptcy should be given preclusive effect under principles
13 of res judicata, collateral estoppel, Rooker-Feldman, or any
14 other preclusive doctrine. The Court is not ruling on
15 whether any orders entered by the state court after this
16 bankruptcy case was filed violated the automatic stay. The
17 Court is not ruling on whether the City of Detroit can
18 propose a feasible or confirmable plan in light of the state
19 constitution or any other consideration, for that matter.

20 All of these issues on which the Court is not ruling
21 today are fully preserved. Of course, when and if these
22 issues are raised in an appropriate way, the Court will rule
23 on them in due course with adequate notice and opportunity to
24 be heard, and, of course, we will address the procedure for
25 dealing with some of these issues in our status conference on

1 August 2nd.

2 The Court will, therefore, grant both of these
3 motions. The Court wants the opportunity to review the
4 proposed orders that were attached to the debtor's motions.
5 In the event the Court wants to tweak or edit any of them, I
6 would ask debtor's counsel to submit those orders in Word or
7 WordPerfect form through the Court's order processing
8 program. I know for sure that one of the things I want the
9 stay extension order to do is to be sure it explicitly
10 preserves the opportunity for parties to file motions for
11 relief from it under Section 362(d), but we'll take care of
12 that, so just submit the orders in the order processing
13 program as they were attached to the motion.

14 That's all I have. Is there anything that anyone
15 else would like to raise at this time?

16 MS. PATEK: Your Honor, on behalf of the public
17 safety unions, we did ask to broaden --

18 THE COURT: You should identify yourself for the
19 record.

20 MS. PATEK: I'm sorry. Barbara Patek on behalf of
21 the public safety unions. We did make a request for
22 affirmative relief, which was not listed among the items that
23 your Honor did not rule on with respect --

24 THE COURT: Yes. Thank you for reminding me of
25 that. In the interest of due process, the Court must

1 conclude that it is necessary for you to file a specific
2 motion requesting that relief. If you think that expedited
3 consideration is appropriate, you can request that.

4 MS. PATEK: Thank you, your Honor.

5 THE COURT: Would anyone else like to raise
6 anything? Yes, ma'am.

7 MS. LENNOX: Thank you, your Honor. For the record,
8 Heather Lennox of Jones Day on behalf of the City of Detroit.
9 A procedural question, your Honor, about the matters that
10 you've set for hearing on August 2nd. There was no objection
11 deadline set for the four motions. Would your Honor wish to
12 set one?

13 THE COURT: I didn't set one in light of the
14 expedited consideration of them, so I'm really not inclined
15 to. If a party wants me to consider a written objection,
16 they should get it to me in time for me to consider it.
17 There was more specifically a question about a response time
18 on the 365 assumption motion, and we got a request -- a
19 motion for clarification as to that. I think that was
20 mentioned earlier today.

21 MS. LENNOX: Yes.

22 THE COURT: And I will deal with that separately in
23 a separate order that I will enter later today or tomorrow.

24 MS. LENNOX: Thank you, your Honor.

25 THE COURT: All right. Anything further? Mr.

1 Gordon.

2 MR. GORDON: Thank you, your Honor. For the record,
3 Robert Gordon on behalf of the Detroit pension systems. I
4 just want one more item of clarification, if I could.

5 THE COURT: Sir.

6 MR. GORDON: You've referenced for the August 2
7 hearings that there's going to be a status conference, and I
8 know that there's some procedural motions that are to be
9 considered. I believe there's also a motion seeking to
10 assume a forbearance agreement.

11 THE COURT: That's the Syncora motion that we were
12 just talking about.

13 MR. GORDON: I'm sorry. I missed that. I couldn't
14 hear her well. Is that going to be a status conference then
15 or an actual --

16 THE COURT: No. I'm going to clarify that in my
17 order that I'm going to enter this afternoon.

18 MR. GORDON: Very good. Thank you, your Honor.
19 Sorry.

20 THE COURT: Yeah. Okay. We'll be in recess.

21 THE CLERK: All rise. Court is adjourned.

22 (Proceedings concluded at 2:48 p.m.)

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WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

July 29, 2013

Lois Garrett
